

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MONICA T NELSON
Claimant

HORMEL FOODS CORPORATION
Employer

APPEAL 17R-UI-09310-NM-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 06/11/17
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 5, 2017, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on October 3, 2017. The claimant participated and testified. The employer participated through Hearing Representative Todd Richardson and Human Resource Manager Elvia Rodriguez. Employer's Exhibit 1 was received into evidence.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a quality control auditor from September 2, 2016, until this employment ended on June 9, 2017, when she voluntarily quit.

Claimant testified, over the last few months of her employment, she was regularly being harassed by a coworker. According to claimant this coworker was often disrespectful, would call her a profane name, and would verbally attack her. Claimant testified she reported this to her immediate supervisors, but nothing was done. Claimant testified the final incident occurred on June 7, 2017, when she was doing a check on the metal detectors. According to claimant this employee approached her and starting yelling that she should not be in the area. Claimant testified she asked the employee to leave her alone, but the employee responded by calling her a profane name and then swiping her hand at her in a pushing motion, just barely missing her head.

On June 9, 2017, a meeting was held between claimant, her immediate supervisor, and human resources to discuss the June 7 incident. During the meeting claimant informed the employer she would no longer work in the same building as the other employee. Rodriguez testified this was the first she had heard about the issue between claimant and her coworker and that she was required to conduct an investigation before any disciplinary action could be issued. The

employer offered several possible solutions to the issue. These solutions included moving claimant and the coworker to opposite sides of the plant; having the two take breaks at different times; moving claimant to the third shift, where there would only be a few hours of overlapping shifts; or moving claimant to the first shift, if they could find someone who would volunteer to switch to the second shift, where claimant was working. Claimant indicated the only way she would continue working was if she was guaranteed not to have to work anywhere in the same building at the same time as her coworker, so as to be completely sure the two would not come into contact with each other.

Rodriguez reiterated she could not guarantee claimant would be able to work first shift, nor could she discharge the individual in question prior to an investigation being completed. Claimant stood by her position that she would not work in the same building as this individual. Rodriguez testified claimant then indicated, if the employee would not be discharged and she could not be switched to first shift, she was resigning. Claimant denies she resigned at this point and testified she believed she was going on leave for a week while an investigation was conducted. The employer submitted a document signed by the claimant on June 9, 2017 that states "Separation effective date: 06/09/17" and "Reason for separation from employment: Voluntary - Quit" with a handwritten notation from the claimant stating, "no choice." (Exhibit 1). Claimant then turned in her badge and keys and left.

Approximately one week later claimant called Rodriguez to check on the status of the investigation. Claimant testified during this call Rodriguez indicated she had been separated from employment the week prior, but that this was the first time she became aware of her separation. Rodriguez testified she continued on with the investigation even after claimant's separation. The investigation included interviewing the witness to the June 7 incident, as identified by claimant. That witness indicated claimant and the other employee exchanged words, but he could not understand what they were saying, as they were speaking English and he only speaks Spanish. The witness told Rodriguez he saw the other employee point her finger, but did not see her make any physical contact with claimant, nor did he get the impression that she had intended to make physical contact with claimant. Rodriguez interviewed the other employee involved, who reported she felt similarly harassed and intimidated by the claimant. Claimant's supervisors were also interviewed and acknowledged they were aware of a situation that occurred between the employees a few months prior and that the two generally did not get along, but were unaware of anything occurring that would be of serious concern. Rodriguez's investigation ultimately concluded that, while claimant and the other employee did not get along, nothing had occurred that would warrant termination. According to Rodriguez, when claimant called she relayed this information to her, but reminded her that she had resigned the prior week. Claimant denied being given all this information during the call, but testified had she been told that the employee would not be discharged and she would not be moved to first shift, she would not have continued working for the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.25 provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(6) The claimant left as a result of an inability to work with other employees.

...

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

Claimant testified she did not know she was separating from employment on June 9, 2017. This assertion is contrary to the plain language used on Exhibit 1. Claimant had the opportunity, which she took advantage of, to make her own notations on the document, but failed to make any notations indicating she was not separating from employment. Furthermore, while it is very likely that claimant honestly held a subjective belief that she was being harassed while at work,

the employer provided credible testimony that its investigation, which included interviewing objective witnesses, did not support this conclusion. Rather it supported the conclusion that claimant and her coworker did not get along and the feelings between them were mutual. After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

Claimant resigned because she was having problems getting along with a coworker. The employer offered several solutions to attempt to resolve the issue, none of which claimant felt were acceptable. When the employer would not agree to either discharge the other employee or guarantee claimant a transfer to second shift, claimant resigned. The employer accepted claimant's resignation, effective June 9, 2017. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The July 5, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs