

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LISA A BROWN
Claimant

R & S AUTO SALES
Employer

APPEAL 16A-UI-02547-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/07/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 25, 2016, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on March 23, 2016. The claimant participated personally. The employer participated through Roger Sorenson, owner. Claimant Exhibit A was admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an office manager and was separated from employment on February 8, 2016, when she resigned without notice. Continuing work was available.

The claimant's immediate supervisor was Roger Sorenson. In October 2015, Mr. Sorenson and his wife, Mrs. Sorenson, temporarily separated due to issues unrelated to the business. It was the claimant who shared information with Mrs. Sorenson about Mr. Sorenson that triggered the separation. Mrs. Sorenson had previously filled in for Mr. Sorenson at work when he had a heart attack in prior years, but was not present in the daily business transactions, beyond being a partial owner. Mrs. Sorenson was also a personal friend to the claimant.

Upon their separation, and at Mrs. Sorenson's request, the claimant volunteered to be the "ears and eyes" and began sending emails and messages to her, with updates about the state of the employer's business, pending lawsuits with the business and Mr. Sorenson's whereabouts and interactions with females. (Claimant Exhibit A). The claimant chose to do so, saying she felt obligated to share the information as Mrs. Sorenson was her friend and also co-owner of the employer's business. The claimant also sent extensive Facebook messages with similar information about Mr. Sorenson to his daughter (Claimant Exhibit A).

The evidence is disputed as to when Mr. Sorenson became aware that the claimant was sending information about him and the business to his estranged wife and daughter, but the undisputed evidence is that the claimant did not request permission from her employer nor proactively furnish copies of the emails sent to Mrs. Sorenson, for Mr. Sorenson to view. The undisputed evidence also is that at no time did the claimant confront either Mr. Sorenson or Mrs. Sorenson while employed to communicate she felt conflicted, trying to balance her employment relationship with Mr. Sorenson with the personal friendship of Mrs. Sorenson. At no time did the claimant share with her employer that she was contemplating quitting because she felt uncomfortable communicating with both Mr. and Mrs. Sorenson, or due to stress in the workplace associated with pending lawsuits.

On January 28, 2016, the claimant was confronted by Mr. Sorenson when he learned about an email sent to Mrs. Sorenson. The claimant told Mr. Sorenson he should be updating his family on the business and he responded that he was sharing information with them. On February 6, 2016, Mr. Sorenson became aware of another email from the claimant to Mrs. Sorenson in which she asserted that she didn't feel Mr. Sorenson was making genuine efforts to wind down a portion of the business as planned. Mr. Sorenson confronted the claimant about the email indicating it was "inaccurate". Mr. Sorenson did not yell at the claimant or raise his voice, but, the claimant became upset during the conversation and said she was tired of things and left for the day. The next day or the following day, the claimant contemplated quitting and offered to return to work, in exchange for being able to keep the vehicle she had been driving as an employee. Mr. Sorenson countered and stated he would not give the claimant the vehicle until she worked for another six months. The following day, the title to the car and the vehicle itself were returned to the employer, and the claimant did not return to perform work. The claimant asserted the reason she quit was due to stress and the work conditions, which were a result of Mr. Sorenson's actions. Specifically, she referred to the fact there was ongoing litigation at the business, and being in the middle of Mr. Sorenson's marital issues with Mrs. Sorenson.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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(28) and (22) 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:

(28) The claimant left after being reprimanded.

(22) The claimant left because of a personality conflict with the supervisor.

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. See 871 IAC 24.25. "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. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

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.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the weight of the evidence in the record fails to establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment without notice.

Rather, the credible evidence presented is that the claimant volunteered to share information about Mr. Sorenson, her manager, to his estranged wife about his personal and professional dealings. This included information about his personal interactions with females, pending litigation, and his business dealings. The claimant admitted she chose to be the "eyes and ears" for Mrs. Sorenson, who was not engaged in daily business transactions, but friends with the claimant. There is no evidence that the claimant's conduct was involuntary or she was pressured into communicating with Mrs. Sorenson, or that Mrs. Sorenson would have any authority to even make a request of the claimant as an employer representative. Rather, the credible evidence presented is that the claimant chose to share information with Mrs. Sorenson based on her personal relationship with her, regardless of the fact that it was Mr. Sorenson who was her manager and employer. As a result of her sharing information about Mr. Sorenson to Mrs. Sorenson, it is not surprising that conflict ensued when Mr. Sorenson became aware of information provided, including that which he deemed to be inaccurate.

In essence, it was Mr. Sorenson's verbal reprimanding of the claimant for sending inaccurate information about him to his estranged wife, which triggered the claimant to quit. Even if the claimant was uncomfortable with the work conditions while the Sorensens were separated, she made no effort to notify her employer that she was uncomfortable or was contemplating resignation as a result. A claimant with work issues or grievances must make some effort to provide notice to the employer to give the employer an opportunity to work out whatever issues led to the dissatisfaction. Failure to do so precludes the employer from an opportunity to make adjustments which would alleviate the need to quit. *Denvy v. Board of Review*, 567 Pacific 2d 626 (Utah 1977). The administrative law judge is not persuaded that it was pending litigation at the workplace, the actions of Mr. Sorenson, or the marital strife between the Sorensens that escalated tensions in the workplace, but rather, the claimant's choice to voluntarily furnish information to her manager's estranged wife about him that contributed to stressful work conditions.

Therefore, the administrative law judge is persuaded the claimant quit after being verbally reprimanded by Mr. Sorenson for an email she sent to Mrs. Sorenson. While the claimant's leaving the employment 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 February 25, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the 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.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs