

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

REBECCA L BERKENBOSCH
Claimant

SDH SERVICES WEST LLC
Employer

APPEAL 20A-UI-01898-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 02/09/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Claimant filed an appeal from the February 21, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on March 18, 2020, at 1:00 p.m. Claimant participated. Employer participated through Gary Quinn, General Manager. No exhibits were admitted.

ISSUE:

Whether claimant's separation was a voluntary quit without 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 as a full-time lead worker from June 19, 2017 until her employment with SDH Services West, LLC (d/b/a Sodexo) ended on February 12, 2020. Claimant provided employer with her written resignation on January 29, 2020. Claimant's resignation was effective February 12, 2020.

Claimant provided multiple reasons for quitting her job. Claimant believed she was hired to do catering work and instead was being assigned to work in the café. When claimant was hired, employer informed claimant that she would need to work in the café in addition to catering work. Claimant's scheduled hours and hourly wage were the same for both types of work. The only difference in the two jobs is that claimant gets to move around more when catering than she does when working in the café. Claimant also felt other employees were hostile and angry towards her. For example, when claimant asked for assistance finding a scale, her coworkers said she was "blind as a bat" and needed to wear glasses. These comments bothered claimant. Claimant did not report the issue to her manager or to human resources per employer's harassment policy. Claimant's coworkers eventually stopped making these comments to claimant. Claimant also took issue with her coworkers' use of profanity. Claimant did not report the issue to her manager. There was continuing work available to claimant if she had not quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit her employment without good cause attributable to employer. Benefits are denied.

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). 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). Where a claim gives numerous reasons for leaving employment the agency is required to consider all stated reasons which might combine to give the claimant good cause to quit in determining any of those reasons constitute good cause attributable to the employer. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534 (Iowa 1985).

Iowa Admin. Code r. 871-24.25(6), (21) provide:

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.

(21) The claimant left because of dissatisfaction with the work environment.

It is the duty of the administrative law judge, as the trier of fact, 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 evidence you believe; 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.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the employer's testimony to be more credible than the claimant's testimony. Specifically, claimant listed as reasons for quitting issues that had been resolved at the time of her resignation.

Claimant's written resignation is both evidence of her intention to sever the employment relationship and an overt act of carrying out her intention. Claimant voluntarily quit her employment. Claimant provided multiple reasons for quitting her job. The administrative law judge has considered all of them and finds that none of them constitute good cause attributable to the employer. Claimant has not met her burden of proving she voluntarily quit her employment for good cause attributable to employer. Benefits are denied.

DECISION:

The February 21, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit without good cause attributable to employer. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

March 30, 2020
Decision Dated and Mailed

acw/scn