

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CLARENCE A GREEN**

Claimant

**APPEAL 19A-UI-04081-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SHEARERS FOODS BURLINGTON LLC**

Employer

**OC: 04/21/19**

**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Admin. Code r. 871-24.25(2) – Quit to Move to Another Locality

Iowa Admin. Code r. 871-24.25(21) – Quit due to Dissatisfaction with Work Environment

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 14, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit his employment for personal reasons. The parties were properly notified of the hearing. A telephonic hearing was held on June 12, 2019. The claimant, Clarence A. Green, participated. The employer, Shearers Foods Burlington, L.L.C., participated through Jill Nieto, HR Generalist. Employer's Exhibits 1 through 9 were received and admitted into the record over objection.

**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 with Shearers Foods Burlington, L.L.C., most recently as a sanitation tech, beginning October 17, 2017. Claimant last reported to work on April 14, 2019. His employment ended on April 19, 2019, when he told Nieto that he was quitting. Claimant told Nieto that his living situation was unstable and he had a lot going on personally. He had recently lost his housing in Iowa, and this forced him to move out of state. Additionally, claimant knew he had about ten attendance points and was at risk of being discharged.

In November 2018, claimant had an altercation with another person in the plant when claimant accused that person of calling him a "fag." Claimant reported this incident to his supervisor. Subsequently, Nieto learned about it and she conducted an investigation. When Nieto met with claimant, he said that for the entire year he had worked in the plant everyone in the plant talked about him that way. Claimant was not able to give her any specifics as to who was saying derogatory things about him or what areas of the plant this was happening in. Nieto asked claimant to let his supervisor know if this ever happened again and asked him to provide details so the employer could take action. When Nieto spoke to the person claimant accused of

making the comment, that person said he did not know who claimant was and did not make the comment. Claimant never complained to Human Resources after November 2018.

### **REASONING AND CONCLUSIONS OF LAW:**

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

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. 871-24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

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:

(2) The claimant moved to a different locality.

...

(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 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 employer's testimony credible. Nieto presented reasonable, straightforward testimony regarding the end of claimant's employment. Claimant's testimony contained inconsistencies that could not be reconciled. Additionally, while he claimed that everyone sexually harassed him, he was unable to provide any specific details about this harassment to substantiate his allegation.

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). In this case, claimant has not established that he was subjected to an intolerable or detrimental work environment that would have justified him quitting his employment. His inability to provide any specific details of the harassment he experienced led the administrative law judge to find his claim not persuasive. The evidence in the record shows claimant quit his employment to move to Nebraska. This was undoubtedly a good personal reason for claimant to end his employment. However, this was through no fault of the employer.

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). In this case, claimant informed Nieto that he would be quitting his employment immediately due to his chaotic life circumstances. The administrative law judge finds claimant has not established his separation was with good cause attributable to the employer. Benefits are withheld.

**DECISION:**

The May 14, 2019, (reference 01) unemployment insurance decision is affirmed. Claimant separated from employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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