

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUE A JOHNS
Claimant

AMERICAN ORDNANCE LLC
Employer

APPEAL 15A-UI-13126-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/01/15
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 24, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 17, 2015. Claimant participated. Production worker/union steward, Dennis Johnson, participated on claimant's behalf. Employer participated through human resources manager, Paul Woodrow, and superintendent, Carson Sparrow.

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 production operator from November 19, 2012, and was separated from employment on November 3, 2015, when she quit.

The employer has a provision in the collective bargaining agreement that outlines a four step disciplinary process for minor offenses, including attendance. The first step is a verbal warning, the second step is a written warning, the third step is a suspension, and the fourth step is termination. Steps stay active for two years. If an employee disputes a disciplinary action, they can utilize the union stewards to discuss with the employer and try to resolve the dispute. If the discussion does not lead to a satisfactory conclusion, the employee can file a grievance under the collective bargaining agreement.

On November 4, 2015, claimant called the employer and told it she was quitting, effective immediately. Claimant told the employer she had some concerns over the past year and it was causing her too much stress. Claimant had been to a doctor early and the doctor told her to reduce her stress. The doctor did not advise claimant to quit her job. Claimant also told the employer it was the best thing for her family since her doctor would not fill out Family and Medical Leave Act (FMLA) leave paperwork for her son.

In May 2015, claimant was given a step three for being late and not calling in an hour before her shift started. Claimant was given a three-day in plant suspension. There was a dispute over whether claimant had time to cover her absence. Claimant wanted the step removed. The dispute was being discussed between claimant, Mr. Johnson, and Mr. Sparrow. Claimant had not filed a grievance over being issued the step.

Claimant also testified there was a dispute over her second step that she stated occurred in March 2015. Claimant testified she was working with Mr. Johnson to get this step removed. The employer was unaware of a second step in March 2015 and had claimant's second step occurring in October 2014. Claimant had not filed a grievance over the second step that was issued to her.

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. Benefits are denied.

It is the duty of an administrative law judge and 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, as the finder of fact, 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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 conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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), (21) and (35) 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.

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

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

(a) Obtain the advice of a licensed and practicing physician;

(b) Obtain certification of release for work from a licensed and practicing physician;

(c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or

(d) Fully recover so that the claimant could perform all of the duties of the job.

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). The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

On November 4, 2015, claimant called and told the employer she quit. Claimant had just seen a doctor and her stress level was too high. Claimant was told by the doctor to reduce her stress, but her doctor did not advise her to quit her employment. Claimant testified she was stressed by the employer failing to remove steps from her disciplinary record; however, claimant was working with a union steward (Mr. Johnson) and had yet to file a grievance over her concerns. Claimant still had procedures (filing a grievance) available to her to remove the steps. Claimant also told the employer she was quitting because it was the best thing for her family since the doctor would not fill out Family and Medical Leave Act (FMLA) leave paperwork for her son. Claimant did not present evidence in writing to employer that a physician suggested leaving the employment because of her stress. Furthermore, claimant did not request any accommodations from the employer to elevate or reduce her stress.

Inasmuch as claimant removed herself from work without a medical directive, her quitting is not for good cause attributable to the employer. While 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 must be denied.

DECISION:

The November 24, 2015, (reference 01) unemployment insurance decision is affirmed. 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.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs

NOTE TO EMPLOYER:

If you wish to change the address of record, please access your account at:<https://www.myiowauui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

<http://www.youtube.com/watch?v=mpCM8FGQoY>