

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JESSICA POWELL
Claimant

AMHOF TRUCKING INC
Employer

APPEAL 16A-UI-04819-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/03/16
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 21, 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 May 10, 2016. The claimant participated personally. The employer participated through Roger Amhof. Claimant's Exhibits A and B were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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 a billing clerk and was separated from employment on April 4, 2016, when she quit the employment. Continuing work was available.

The claimant tendered her resignation via text message to the employer's owners, following a day of conflict with her manager Carol Milliam. On April 4, 2016, Ms. Milliam initiated a confrontation with the claimant upon learning that the claimant had information pertaining to both former and current employees, unrelated to the workplace. Ms. Milliam became upset with the claimant and stated the claimant was more loyal to her co-workers than her manager. Ms. Milliam continued to be unhappy with the claimant, slamming her door, and refusing to speak to her. In addition, the claimant reported that Ms. Milliam challenged the claimant's naming and handling of a file for a meeting, at one point stating "I was about to call you a liar". Upset about the ongoing treatment from her supervisor, which the claimant deemed to be harassing and abusive, she quit that day.

Prior to April 4, 2016, the claimant had an ongoing history of conflict with Ms. Milliam, a long-term employee of 23 years and the claimant's immediate supervisor. The claimant indicated part of her reason for quitting was related to Ms. Milliam's pressuring the claimant to

obtain her Adderall pills, even though Ms. Milliam did not have a valid prescription (Claimant's Exhibit B). The claimant was informed Ms. Milliam could not perform her work without them and would coordinate via cryptic text messages (Claimant's Exhibit B) for the claimant to pick up pills, both in her personal and on work time. The claimant once questioned Ms. Milliam about obtaining pills from her own doctor and was informed the doctor would not prescribe them. When the claimant struggled to find pills for Ms. Milliam to buy, Ms. Milliam would become upset with her. The most recent time Ms. Milliam had pressured the claimant to obtain pills for her was about a week before her resignation.

In addition, the claimant reported that Ms. Milliam would badger her, tell Roger Amhof that she was "heartless" (Claimant's Exhibit A) and would belittle her about lack of family support as a single mother, in addition to using profanity at her (Claimant's Exhibit B). In addition, the claimant stated that Ms. Milliam discouraged her from contacting the Amhofs (Claimant's Exhibit B) and told the claimant she (Ms. Milliam) was "Roger's girl." As a result, the claimant did not inform the employer of her concerns prior to her resignation. Further, when the claimant had previously reported an incident to Randy Amhof in 2013 about Ms. Milliam's treatment of her, when Ms. Milliam found out, the claimant was directed to go back and say Ms. Milliam had not mistreated her as reported (Claimant's Exhibit B).

Ms. Milliam did not attend the hearing or offer a written statement in lieu of participation. Mr. Amhof reported she was still employed but unavailable. No request for postponement was made on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was with good cause attributable to the employer.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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 establishes the claimant quit for intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment without notice.

Iowa Admin. Code r. 871-24.26(3) and (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:

(3) The claimant left due to unlawful working conditions.

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

In this case, the claimant was subjected ongoing harassing and abusive conduct by way of Carol Milliam, her manager, including use of profanity, threats, and outbursts (Claimant's Exhibit B). Most concerning, is that Ms. Milliam routinely pressured the claimant to locate Adderall for Ms. Milliam to purchase, without a valid prescription, which is illegal. The claimant was required to search and purchase pills for Ms. Milliam both in her personal and work time. When the claimant could not locate the pills, Ms. Milliam would become upset with her (Claimant's Exhibit B).

Generally, 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. However, based on the testimony presented, the claimant was reprimanded by her manager for previously reaching out to upper management. Consequently, and understandably, the claimant was not comfortable confronting upper management about Ms. Milliam.

Ms. Milliam did not attend the hearing or offer a written statement in lieu of participation. Nor was any credible evidence presented by the employer to refute the claimant's testimony. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). Mindful of the ruling in *Crosser, id.*, and noting that the claimant presented direct, first-hand testimony, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer. No employee should have to endure intimidation, insults, and pressure to engage in illegal acts in order to retain employment or avoid disqualification from unemployment insurance benefits. The actions of the claimant's manager, Carol Milliam, created an intolerable work environment for the claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The April 21, 2016 (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible and the benefits withheld shall be paid.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/can