

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KENT A KIRKPATRICK
Claimant

HUPY AND ABRAHAM S.C.
Employer

APPEAL 17A-UI-08450-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/23/17
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 7, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 6, 2017. The claimant participated personally. The employer participated through Jeanne Daniels, human resources director. Jennifer Canavan, director of operations, also testified for the employer. Claimant Exhibits A,B, C, and Employer Exhibits 1 through 5, 2017 were received into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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

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 litigation attorney, and was separated from employment on May 23, 2017, when he quit the employment (Employer Exhibit 1). Continuing work was available.

The claimant joined the employer, which operates a law firm, in December 2015. He worked at the Des Moines office. The employer utilized a structure in which attorneys shared a pool of legal assistants who handled pre-litigation files, which were then assigned to attorneys. The legal assistants were primarily located in the Des Moines office but the employer also allocated some legal assistants in its Milwaukee, Wisconsin office to assist with Iowa files. The attorney then had a designated paralegal handling his or her litigation files. The claimant's paralegal was Melissa Christie. The undisputed evidence is the employer had a significant turnover of legal

assistants during the claimant's first year of employment. In fact, only one legal assistant, Cindy Bulman, remained employed in the Des Moines office through the claimant's first year of employment.

In December 2016, the claimant anticipated he would receive his yearly performance review, and subsequent raise, based upon verbal discussions with Chad Kreblin, at the time of hire. The employer asserted performance reviews are discretionary and postponed the claimant's review to March 2017. The claimant did receive his performance review and a raise in March 2017. Thereafter, the employer began receiving concerns and complaints regarding the claimant's interactions and presence in the office, which triggered a meeting on April 5, 2017 between the claimant and employer. During the meeting, which included Mr. Kreblin, and also Mr. Abraham, the claimant was made aware that concerns had been lodged about his responsiveness and presence in the office, which was prohibiting the staff from completing their duties. In response, the claimant requested specific details or instances about the allegations lodged. He was provided a memorandum of performance expectations the next day (Employer Exhibit 3), which included being more present in the office, more responsive, and not requesting legal assistants to make certain phone calls for the claimant, or asking them to re-do files. The claimant was also advised not to take up matters contained in the performance memorandum with applicable staff (Employer Exhibit 3).

Over the next month, the claimant experienced ongoing frustration with the handling of his files, specifically those handled by Ms. Bulman, who was often overwhelmed and did not complete files to his satisfaction. At no time was the claimant disciplined himself, as a result of her poor handling of a file. The claimant was an experienced attorney, had a preferred way to organize his files, and the employer utilized a more standardized approach in preparing the pre-litigation files. The claimant did not contact Jennifer Canavan, Ms. Bulman's manager, directly with any concerns about her. On May 1, 2017, however, Ms. Christie, the claimant's paralegal, contacted Ms. Canavan, about her concerns of file handling, and the claimant was included on the contact. In addition to Ms. Canavan, the claimant had the option to go to Jason Abraham, managing attorney, or Chad Kreblin, the claimant's immediate supervisor, with office or staff concerns needing resolution.

On Friday, May 12, 2017, the claimant submitted a response to the employer's April 6, 2017 memorandum of performance expectations (Employer Exhibit 2). The employer had not requested the claimant respond to the memorandum. The claimant ended his response with "Consider what I said and talk to me before you come up with a list like that and unnecessarily require me to address this" (Employer Exhibit 2). The response was emailed to Jason Abraham and Chad Kreblin, with a subject of "memo concerns" (Employer Exhibit 2). The email did not request any follow up meeting with the employer by the claimant.

On Tuesday, May 16, 2017, after receiving no response from the employer, the claimant tendered his resignation (Employer Exhibit 1). At the hearing, the claimant asserted his reason for resignation was primarily attributed to Ms. Bulman, (Claimant Exhibit A) and that the employer had not made good on promises made, specifically that he would receive a raise each year with an annual review.

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. Benefits are denied.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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(6) 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:

(6) The claimant left as a result of an inability to work with other employees.

Iowa Admin. Code r. 871-24.25(28) 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.

Iowa Admin. Code r. 871-24.25(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.* 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 claimant 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 claimant has not met his burden of proof to establish he quit for good cause reasons within Iowa law.

The credible evidence presented is the claimant quit on May 16, 2017, (Employer Exhibit 1) four days after responding to a performance expectations memorandum, which had been issued to him approximately five weeks prior, on April 6, 2017. A careful review of the claimant's response to the performance expectations memorandum, (Employer Exhibit 2) reveal the claimant was deeply offended by the "allegations" outlined in the memorandum (Employer Exhibit 2/Claimant Exhibit A).

The claimant asserted the ongoing issues with Ms. Bulman, punctuated by the delivery of a performance expectation memo (which referenced his interactions), affected his decision to quit (Claimant Exhibit A). An employer has the right to allocate personnel in accordance with the needs and available resources. *Brandl v. Iowa Dep't of Job Serv.*, (No. ___-___/___-___, Iowa Ct. App. filed ___, 1986). The administrative law judge is sympathetic to the claimant being affected to staff turnover and an overwhelmed Ms. Bulman, and recognizes the growing pains associated with the departure and hiring of new staff. The administrative law judge further recognizes the importance and role legal assistants played in handling pre-litigation files before being assigned to attorneys including the claimant.

Based on the evidence presented, the administrative law judge is not persuaded the conversations, words used or conditions between the claimant and Ms. Bulman were

inappropriate, nor were they ever escalated to a point that would be deemed harassment or a hostile work environment, but rather due to personality conflict. Further, it cannot be ignored, that prior to quitting the employment, the claimant did not bring forth any specific concerns to Ms. Canavan or management, regarding Ms. Bulman that caused him to contemplate leaving the employment. 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. *Denby v. Board of Review*, 567 P2d 626 (Utah 1977). Even if the claimant's May 12, 2017 email in response to the performance memorandum that was delivered five weeks prior, was considered the claimant's attempt to make the employer aware of grievances, he did not give the employer a reasonable opportunity to respond or resolve any issues, noting the email was sent on Friday, May 12, 2017 and he resigned on May 16, 2017, the following Tuesday.

Rather, the credible evidence presented supports the claimant quit the employer because he did not agree and was upset with the April 6, 2017 performance expectation memorandum, and due to a personality conflict with legal assistant, Cindy Bulman. Given the stale date of the claimant's concern regarding his anticipated December 2016 performance review and raise, it is individually addressed as the claimant acquiesced by not raising concerns with his supervisor or quitting earlier when it arose.

Based on the evidence presented, the administrative law judge concludes that 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 must be denied.

DECISION:

The August 7, 2017, (reference 01) decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer under Iowa law. 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.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn