

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ASHLEY A EATHERTON
Claimant

HY-VEE INC
Employer

APPEAL 19A-UI-04687-DG

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/19/19
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 7, 2019, (reference 01) that held claimant ineligible for unemployment insurance benefits. After due notice, an in-person hearing was scheduled for and held on July 23, 2019 in Council Bluffs, Iowa. Claimant participated. Employer participated by David Williams, Hearing Representative.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 19, 2019. Claimant notified employer that she was quitting work effective immediately on May 20, 2019.

Claimant began working for employer as a part-time cashier on January 18, 2018. Claimant and her 9 year old son had suffered personal tragedies beginning in the summer months of 2018. Claimant's son was dealing with the death of his father, and claimant was struggling to help her son as he grieved, and learned to cope with his loss. During this same time claimant did receive support from her mother who helped take care of her son.

In May, 2019 claimant was really struggling with grief, and with her sons depression and other illnesses associated with the tragedy he had suffered. Claimant was in the process of working with her mother and medical professionals to find some solutions to her son's increasingly severe medical issues. Employer's human resource office knew of the dilemma claimant was dealing with, and the human resource officer did try to work with claimant in scheduling time off to attend appointments during the last few months of claimant's employment.

On May 19, 2019 claimant decided to resign from the employment. She felt she needed more time to be available for her son, and she felt it would be best if she quit her job on that date. Claimant called into the store and notified her manager that she was quitting effective immediately on that date.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because she was dealing with serious personal issues.

Iowa Code section 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(23) 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:

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

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.*

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

Individuals who leave their employment due to disparate treatment are considered to have left work due to intolerable or detrimental working conditions and their leaving is deemed to be for good cause attributable to the employer. The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Dep't of Job Serv.*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Emp't Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

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. Benefits must be denied.

DECISION:

The decision of the representative dated June 7, 2019, (reference 01) is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn