

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THOMAS R WENTWORTH
Claimant

SINCLAIR BROADCAST GROU
Employer

APPEAL 17A-UI-11375-JP-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 11/27/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 31, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 28, 2017. Claimant participated. Employer participated through hearing representative Christopher Hunter, regional human resources Kari Hopwood, and business manager Crystal Amini-Rad. General Manager Carol Kellum appeared on behalf of the employer. Local sales manager Matt Carriker registered as a witness on behalf of the employer, but the employer elected not to have him contacted for the hearing. Claimant Exhibit A was admitted into evidence with no objection. Employer Exhibits 1 and 2 were admitted into evidence with no 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 as an account executive/market consultant from August 14, 2017, and was separated from employment on September 22, 2017, when he quit.

On September 15, 2017, claimant refused to come to work. Employer Exhibit 2. Claimant e-mailed Ms. Kellum, Ms. Amini-Rad, and Mr. Carriker, that he did not want to work with Ms. Kellum directly and he felt he was being treated differently. Employer Exhibit 2. Ms. Amini-Rad called claimant about his complaint. Employer Exhibit 2. Claimant told Ms. Amini-Rad that he believed he was being treated differently. Employer Exhibit 2. Ms. Amini-Rad discussed with claimant that he was on the same training plan as the other employee, but the other employee was progressing faster so the employer had to adjust claimant's training. Employer Exhibit 2. Ms. Amini-Rad also discussed with claimant his statement that he did not want to work directly with Ms. Kellum without another employee present. Employer Exhibit 2. Ms. Amini-Rad explained that Ms. Kellum was the general manager and may need to meet with him directly. Employer Exhibit 2. Claimant told Ms. Amini-Rad that he understood. Employer Exhibit 2. Ms. Amini-Rad told claimant to let the employer know if he had any other concerns. Employer Exhibit 2. Ms. Amini-Rad also informed claimant the employer was thinking of preparing an

improvement plan for him. Employer Exhibit 2. Claimant told Ms. Amini-Rad he thought that it would be helpful. Employer Exhibit 2.

On September 16, 2017, claimant sent an e-mail to Ms. Kellum, Ms. Amini-Rad, and Mr. Carriker apologizing “for the trouble [he] caused [on September 15, 2017.]” Employer Exhibit 1. Claimant stated he “decided to take any direction or criticism for [his] performance personally.” Employer Exhibit 1. Claimant apologized “for making things personal.” Employer Exhibit 1.

On September 20, 2017, the employer met with claimant to discuss an improvement plan. Claimant Exhibit A and Employer Exhibit 2. During the meeting, the employer discussed certain areas claimant needed to improve. Claimant Exhibit A. Claimant signed off on the improvement plan and worked the remainder of his shift. Claimant Exhibit A.

On September 21, 2017, claimant sent a text message to Mr. Carriker (claimant’s direct supervisor) that stated “My beautician does not like [claimant] to drive in the rain. I won’t be in until later today. Don’t call!” Employer Exhibit 2. After Mr. Carriker received the text message, he spoke to Ms. Amini-Rad about claimant’s text message. The employer thought the text message was the result of an auto correct error. Mr. Carriker responded to claimant via text message that he should contact Ms. Amini-Rad. Later on September 21, 2017, claimant sent an e-mail to James Killen (group manager) requesting a transfer out of the Kirksville and Ottumwa area. Claimant Exhibit A. Claimant told the employer if it thought he “should consider other options such as resignation[,]” he would “accept that and move on.” Claimant Exhibit A. After claimant sent this e-mail, he contacted Ms. Amini-Rad. Claimant Exhibit A. Ms. Amini-Rad asked claimant about his text message to Mr. Carriker. Claimant Exhibit A. Claimant informed Ms. Amini-Rad that there was not a typing error in his text message and it was what he intended to send. Claimant Exhibit A. Claimant told Ms. Amini-Rad he was being sarcastic. Claimant Exhibit A. Ms. Amini-Rad told claimant it was not an acceptable way to call off of work. Claimant Exhibit A. Ms. Amini-Rad asked why claimant told Mr. Carriker not to call. Claimant Exhibit A. Claimant responded that he did not want to talk to anyone and he questioned Mr. Carriker’s integrity. Claimant Exhibit A. Ms. Amini-Rad told claimant an employee from human resources would be calling him and not to report to work until the human resources employee called him. Claimant Exhibit A.

On September 22, 2017, Ms. Hopwood called claimant and informed him that the employer had received his e-mail. The employer informed claimant a transfer was not possible. Ms. Hopwood told claimant that the employer would accept his resignation. Ms. Hopwood also scheduled a time on September 27, 2017 to meet with claimant to discuss his complaints about how he felt he was treated even though he was no longer an employee. Ms. Hopwood wanted to meet with claimant to determine if there was anything the employer needed to address based on claimant’s complaints. On September 27, 2017, claimant did not answer when Ms. Hopwood attempted to contact him. Ms. Hopwood left claimant a message, but he did not return her call.

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 reviewed the exhibits that were admitted into evidence. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

Iowa Code section 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(21) 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:

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

Iowa Admin. Code r. 871-24.25(22) 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:

(22) The claimant left because of a personality conflict with the supervisor.

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.

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). 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).

Claimant's argument that he was being treated unfairly is not persuasive. On September 15, 2017, Ms. Amini-Rad spoke with claimant regarding his complaints of being treated differently. Ms. Amini-Rad explained to claimant that the employer was meeting with him more than the other employee because he was not progressing at the same pace. Then on September 21, 2017, the day after the employer gave him an improvement plan, claimant sent the employer an e-mail requesting a transfer or he would consider resigning. The employer denied claimant's transfer request and accepted his resignation.

Claimant has not demonstrated that a reasonable person would find the work environment detrimental or intolerable. *O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). Claimant has not met his burden of proving that his voluntary leaving was 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 October 31, 2017, (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 claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/scn