

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MICHELLE M SIGMON
Claimant

SNAPPY POPCORN CO
Employer

APPEAL 16A-UI-12470-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/30/16
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 16, 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 December 8, 2016. The claimant participated personally. Former employee, Christy Young, also testified for the claimant. The employer did not register a phone number with the Appeals Bureau and did not participate. Claimant exhibit A was 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.

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 line operator beginning June 13, 2016 and was separated from employment on September 19, 2016, when she quit without notice. Continuing work was available.

The claimant quit the employment due to ongoing treatment and language used by her supervisor, Dave Billmeier. Specifically, Mr. Billmeier routinely would curse at employees, kick cans at them when he was mad, throw wrenches in the air when machinery broke and punch machines. The claimant and Ms. Young stated this conduct occurred on a regular basis, so long as the owner was not in the work area. Specifically, Mr. Billmeier said to the claimant comments such as “what the f--- are you doing? Fix the motherf---ker” and “I’m the head n---er in charge and I demand respect. And I will get it!”

The claimant continued to experience Mr. Billmeier yelling and using profanity, including the week before she quit the employment when a machine broke and he said “what the f--- is this? What the f--- is going on?” before taking a broom and violently sweeping corn kernels with such

aggression that they flew across the room. The claimant did not confront Mr. Billmeier because she was scared.

Mr. Billmeier's manager was the plant owner, John. The claimant had requested to meet with John in July and intended to report Mr. Billmeier's conduct. The meeting did not occur when she was told he was busy. The employer has no hotline for employees to call in concerns and no human resources department. The claimant quit by way of telling Lori Sliceman, office manager.

REASONINGS 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.

Iowa Admin. Code r. 871-24.26(2) 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:

(2) The claimant left due to unsafe working conditions.

Iowa Admin. Code r. 871-24.26(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:

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

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). In the case of a resignation because of suspected illegal or unethical corporate behavior, the proper inquiry is whether a person of reasonable prudence would, in like circumstances, believe that improper or illegal activities were occurring at the place of work and that these activities necessitated the individual's quitting. *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 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 illegal, intolerable and/or detrimental working conditions that would cause a reasonable person to quit the employment without notice.

In this case, the claimant was subjected to repeated berating and abusive language by Mr. Billmeier, her immediate supervisor, who would curse, kick items, punch machines and throw wrenches in anger. Mr. Billmeier said to the claimant comments including "what the f--- are you doing? Fix the motherf---ker" and "I'm the head n---er in charge and I demand respect. And I will get it!" His conduct would only occur when the plant owner was not in his work area. The claimant attempted to request a meeting with Mr. Billmeier's manager, who was the plant owner, but was unsuccessful. After repeated incidents of his anger, the claimant decided to quit.

"The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). Inasmuch as an employer can expect professional conduct and language from its employees, the claimant is entitled to a working environment without being the target of abusive, obscene, name-calling. An employee should not have to endure bullying or a public dressing down with abusive language directed at them, either specifically or generally as part of a group, in order to retain employment any more than an employer would tolerate it from an employee. Based on the evidence presented, Mr. Billmeier 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 November 16, 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/rvs