

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ASHLEY L WHITE
Claimant

ABOLT INC
Employer

APPEAL 19A-UI-09088-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/27/19
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant, Ashley L. White, filed an appeal from the November 14, 2019 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A first hearing was scheduled for December 12, 2019. The claimant appeared and Barb Gilman appeared on behalf of the employer. The hearing was continued to allow the employer to receive the claimant’s proposed exhibits. A telephone hearing was held on December 16, 2019. The claimant participated personally. The employer participated through Craig Abolt, owner.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Claimant Exhibits 1-15, 30-33 were admitted. Claimant’s Exhibits 16-29 were not admitted. 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 payroll assistant and was separated from employment on October 25, 2019, when she quit the employment. Continuing work was available.

The claimant quit the employment due to ongoing issues related to her supervisor and because she felt uncomfortable with performing payroll deductions, which she believed were illegal. The claimant also raised concerns about not being paid for her lunch but being expected to cover phones.

The claimant stated on multiple occasions she was asked to deduct money from paychecks for reasons she felt were improper, and when she raised concern to her manager, Ms. Gilman, she was told, “it’s ok, we’ve done it before”. Specifically, the claimant cited to an instance when an

employee named Andrew left the employer and the claimant was directed to deduct money from his final paycheck that he owed another employee so the debt would be squared away.

In addition, the employer directed the claimant to deduct \$10.00 each day that an employee failed to turn his timecard in on time (which was a daily basis) as punishment. The claimant estimated the employer deducted over \$1,000.00 during a year from this employee.

Additionally, the claimant had issues with her manager, Ms. Gilman, as it related to her micromanaging. When she tried to discuss the issues with Mr. Abolt, he was unsupportive and the conversation led to the claimant to cry.

At the time of separation, the claimant was still being requested to make payroll deductions for the late time cards and had learned it was not legal. She was not comfortable confronting Mr. Abolt about it before she quit.

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.

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. 871-24.26 provides in pertinent parts:

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.

The claimant has the burden of proof to establish she quit with good cause attributable to the employer, according to Iowa law. "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.*

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 claimant has not met her burden of proof to establish she quit for good cause reasons within Iowa law.

While a claimant does not have to specifically indicate or announce an intention to quit if her concerns are not addressed by the employer, for a reason for a quit to be "attributable to the employer," a claimant faced with working conditions that she considers intolerable, unlawful or unsafe must normally take the reasonable step of notifying the employer about the unacceptable condition in order to give the employer reasonable opportunity to address his concerns. *Hy-Vee Inc. v. Employment Appeal Board*, 710 N.W.2d 1 (Iowa 2005); *Swanson v. Employment Appeal Board*, 554 N.W.2d 294 (Iowa 1996); *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). If the employer subsequently fails to take effective action to address or resolve the problem it then has made the cause for quitting "attributable to the employer."

The credible evidence establishes the claimant was repeatedly requested to perform illegal payroll deductions, and when she raised concern about the deductions to her manager, she was told to continue doing it. There was no evidence presented that the employees authorized the employer to make the deductions pursuant to Iowa Code § 91A.5. The claimant confirmed before quitting that the deductions were illegal. A reasonable person would quit the employment upon learning they were being asked to engage in illegal conduct, even after notification to the employer. The claimant has established a good cause reason attributable to the employer. The claimant is allowed benefits, provided she meets all other requirements.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

DECISION:

The November 14, 2019 (reference 01) initial decision is reversed. The claimant quit with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge
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Decision Dated and Mailed

jlb/scn