

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DANIELLE R TIEGEN**

Claimant

**ZIO JOHNOS INC**

Employer

**APPEAL 19A-UI-09465-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, Danielle R. Tiegen, filed an appeal from the November 19, 2019 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. A first hearing was scheduled for December 30, 2019 but postponed to allow the employer time to review the proposed exhibits. The parties were properly notified about the second hearing. A telephone hearing was held on January 22, 2020. The claimant participated personally. The employer, Zio Johnos Inc., participated through Eli Khairallah, owner.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Claimant Exhibits A-C and Employer Exhibits 1-7 were 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 corporate manager and was separated from employment on October 27, 2019, when she quit the employment without notice (Exhibit 5). Continuing work was available.

The claimant worked for the employer for five years. On the day she quit employment, she and Mr. Khairallah had a confrontation via text message about her increasing the pay incrementally of a new employee, Staci, who happened to also be her daughter (Claimant Exhibit B). The claimant was upset by the messages, as the employer had incrementally increased the pay of Staci’s peer in the same manner (Claimant Exhibit B). The claimant also offered to reduce her own pay to offset the pay increase, which she felt was earned (Claimant Exhibit B). The exchange ended with Mr. Khairallah telling the claimant he had lost trust in her (Claimant Exhibit B).

Prior to separation, the claimant had experienced ongoing issues, which she had brought to Mr. Mr. Khairallah's attention but had not improved (Claimant testimony, Claimant Exhibits A, C). These issues included ongoing harassment from a friend of Mr. Khairallah, who was not an employee and had contacted the claimant repeatedly to the point she had to contact law enforcement. The claimant also experienced issues related to the treatment by the general manager and kitchen staff, who would yell and cuss at the claimant and disregard the claimant's directives. When she told Mr. Khairallah about her ongoing concerns, she was told that "they (kitchen staff) don't listen to females." Mr. Khairallah eventually reduced the hours of one of the employees in response to treatment of the claimant, but only after the claimant brought it to his attention and only after he made sure he had adequate staffing to cover.

In addition, the claimant had brought concerns to Mr. Khairallah about racist comments made in the workplace by her co-worker, which included jokes of deporting an employee who didn't do her job correctly, deporting the claimant's boyfriend and yelling "ICE" as though an immigration raid was occurring.

The claimant also cited to concerns about personnel practices related to processing employees under different names and social security numbers than they were hired. The claimant feared she may be held legally responsible for any paperwork processed under directives from Mr. Khairallah.

#### **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.

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 met her burden of proof to establish he quit for good cause reasons within Iowa law.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. 871 IAC 24.26(4). 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."

While the final exchange between the claimant and Mr. Khairallah alone may not have constituted intolerable or detrimental working conditions. However, the final exchange in connection with the ongoing issues related to harassment of the claimant from Mr. Khairallah's friend, the employer's acquiescence to its staff not respecting the claimant because she was a female, the insensitive and wholly inappropriate comments made by employees related to immigrants, as well as the claimant being asked to perform questionable personnel practices would cause a reasonable person to quit the employment.

An employee also has the right to expect that management when notified about such conduct will take reasonable steps to address the concerns. The conduct the claimant was subjected to was severe and recurring, and it cannot be ignored that the claimant was a long term employee. This is not a case of one time incident or possibly hypersensitive employee. Under the facts of this case, a reasonable person would conclude that the employer created an intolerable and detrimental work environment for the claimant, that gave rise to a good cause reason for leaving the employment. Benefits are allowed provided she is otherwise eligible.

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 unemployment insurance decision dated November 19, 2019, (reference 01) is reversed. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

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Jennifer L. Beckman  
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Decision Dated and Mailed

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