

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMIE D BROWN
Claimant

WELDON TIRE INC
Employer

APPEAL 18A-UI-04461-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/18/18
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 2, 2018, (reference 01) unemployment insurance decision that denied benefits based on his voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on May 4, 2018. The claimant participated and testified. The employer participated through Store Manager Dan Temperley.

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 a tire mouter from April 12, 2004, until this employment ended on February 16, 2018, when he voluntarily quit.

Claimant testified there were several reasons why he resigned, but the primary issue had to do with on-going issues with one of his co-workers. Claimant testified the co-worker, Dave, was always arguing with him and he felt physically threatened by him. According to claimant, he warned Temperley that the disagreements might get physical and told him that Dave had threatened to punch him. Temperley testified he was aware of the issues between claimant and Dave. According to Temperley, both would regularly complain that they were always doing more work than the other. Temperley acknowledged claimant had told him things were going to come to “fisticuffs” but denied he was ever told about any specific threats.

Also factoring into claimant’s decision to quit was the fact that he was experiencing pain in his elbows from tennis elbow. Claimant told the employer about the pain when it first started happening, but he saw a doctor, received some treatment, and the pain went away. After some time, the pain came back again. Claimant did not tell the employer when the pain came back, nor did he advise them that he would have to quit if it did not improve. Finally, claimant testified he was upset because several months prior, the employer filled an open position with someone

they hired from the outside, rather than promoting from within. Had claimant not resigned, work would have continued to be available to him.

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.

The decision in this case rests, at least in part, on the credibility of the witnesses. 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, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more accurate and credible.

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 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:

(6) The claimant left as a result of an inability to work with other employees.

...

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

Iowa Code section 96.5(1)d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement added to rule 871-24.26(6)(b), the provision addressing work-related health problems. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

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).

Here, claimant left for a variety of reasons. One of the reasons claimant gave for leaving was due to pain he was experiencing in his elbows. However, claimant did not leave work upon the advice of his doctor, nor did he inform the employer of the problem or his intent to quit prior to resigning, as required by the statute. Claimant also stated he was upset that an open position was filled by someone outside the company and was having problems with a co-worker. Claimant has failed to show that his issues with his co-worker amounted to an intolerable working condition. Rather, it appears both individuals believed they were doing more work than the other and continually disagreed on this point. While claimant's leaving 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 are denied.

DECISION:

The April 2, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/scn