

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JACOB A WEATHERMAN
Claimant

MENARD INC
Employer

APPEAL 17A-UI-07449-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/04/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 12, 2017, (reference 06) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 9, 2017. Claimant participated. Employer participated through plant manager Jordan Tingley. Official notice was taken of the administrative record, including claimant's benefit payment history and the fact-finding documents, 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 a production employee from February 4, 2016, and was separated from employment on October 12, 2016, when he quit.

Approximately two weeks before October 12, 2016, claimant told Mr. Tingley that he was putting in his two week notice because he was getting a different job with Alliant Energy. Claimant testified he told Mr. Tingley he was going to work for Alliant Energy, but he was actually going to work for PSC Q3 Contractors. PSC Q3 Contractors performs contract work for Alliant Energy. Claimant did not tell Mr. Tingley when he was going to start with Alliant Energy. Mr. Tingley accepted claimant's resignation. The employer had work available for claimant had he not resigned.

During claimant's employment with the employer, he was also going to school. Before claimant could start working for PSC Q3 Contractors, he had to finish his schooling. Prior to claimant giving the employer his resignation notice, he was offered the job at \$22.00 per hour with PSC Q3 Contractors; however, the job offer was contingent on claimant finishing his schooling. Claimant finished his last classes so he could go work for PSC Q3 Contractors in May 2017. After claimant finished his classes, he had to attend training at PSC Q3 Contractors, which did not start until July 2017. Claimant did not start working for PSC Q3 Contractors until July 2017.

Mr. Tingley testified that he was not aware that claimant went and worked for MCS Preservations after his separation from the employer. Claimant did not mention the job at MCS Preservations to Mr. Tingley when he resigned. Claimant testified he started working for MSC Preservations, which was owned by his cousin on October 14, 2016.

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

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

Iowa Admin. Code r. 871-23.43(5) provides:

(5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

Iowa Admin. Code r. 871-24.25(26) 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:

(26) The claimant left to go to school.

Iowa Admin. Code r. 871-24.25(37) 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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).

Prior to giving this employer (MENARD INC) his resignation notice, claimant was attending school. Claimant gave his two week resignation notice to this employer (MENARD INC) because he received a job offer from PSC Q3 Contractors; however, this job offer was contingent on him finishing his schooling. Claimant was aware when he gave this employer (MENARD INC) his resignation notice that he had to finish his schooling before he could work for PSC Q3 Contractors. Claimant continued his schooling after he quit this employer (MENARD INC); however, he did not finish his schooling until May 2017. Claimant did not start working for PSC Q3 Contractors until July 2017. Furthermore, although claimant testified he did start working for MCS Preservations on October 14, 2016, he did not inform Mr. Tingley that he was resigning from this employer (MENARD INC) to accept employment with MCS Preservations. Therefore, when claimant gave the employer his two week resignation notice, he was not resigning for other employment with PSC Q3 Contractors, he was resigning to finish his schooling so he could gain other employment with PSC Q3 Contractors, which is not a good cause reason attributable to the employer for leaving the employment. As such, benefits are denied.

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 July 12, 2017, (reference 06) 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/rvs