

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROBIN E DIAZ
Claimant

APPEAL NO. 19A-UI-08790-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BIG LOTS STORES INC
Employer

OC: 10/13/19
Claimant: Respondent (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 28, 2019, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on October 11, 2019 for good cause attributable to the employer. After due notice was issued, a hearing was held on December 3, 2019. Claimant Robin Diaz participated. Scott Quick represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Robin Diaz was employed by Big Lots Stores, Inc. as a full-time Assistant Manager/Team Leader of Merchandizing until October 11, 2019, when she voluntarily quit in response to a reprimand. Ms. Diaz began her employment in 2011. Throughout the employment, Ms. Diaz worked at the employer's retail store in Davenport. Ms. Diaz became Assistant Manager/Team Leader of Merchandizing at the beginning of August 2019. Prior to that, Ms. Diaz's job title was Assistant Manager of Service. Ms. Diaz's duties included all aspects of freight processing, including unloading freight from trucks, moving freight from the dock to the sales floor and supervising the stock crew, marking down merchandise, monitoring food expiration dates, and duties as assigned. Ms. Diaz usually worked five nine-hour shifts per week for a total of 45 hours per week. Ms. Diaz's promotion to the Assistant Manager/Team Leader of Merchandizing position corresponded with Scott Quick's promotion from Assistant Manager/Team Leader of

Merchandizing to Store Manager at the beginning of August 2019. At that time, Mr. Quick became Ms. Diaz's immediate supervisor.

On October 11, 2019, Mr. Quick summoned Ms. Diaz to a meeting for the purpose of issuing a written reprimand to Ms. Diaz. Ms. Diaz had received no prior reprimands during her employment. Mr. Quick advised Ms. Diaz that she was being counseled for untimely freight processing and a number of things that she needed to do better. Mr. Quick referenced almost all of Ms. Diaz's areas of responsibility as areas that needed improvement. Ms. Diaz asked Mr. Quick how he could reprimand her for untimely freight processing when the freight in back stock had accumulated during Mr. Quick's tenure as Assistant Manager/Team Leader of Merchandizing. Mr. Quick believed the freight in question had accumulated after his promotion. Ms. Diaz believed the reprimand was unfair in light of Mr. Quick requiring her to frequently work with an understaffed stock crew. Mr. Quick scheduled the stock crew consistent with company labor expense standards. When stock crew members were absent from scheduled shifts, Ms. Diaz and others were expected to perform that employee's duties. Though a full crew would consist of six stock workers, Ms. Diaz frequently had to unload and process freight with one or two. On one or more occasions, Ms. Diaz had to unload mattresses from a freight truck without assistance. Early in the October 11, 2019, disciplinary meeting, Ms. Diaz recognized the counseling form as a disciplinary document and stated that she would not be signing the form. During the meeting, Ms. Diaz reiterated that she was not signing the written reprimand. Mr. Quick told Ms. Diaz that she was not required to sign the form and that signing would merely indicate that they had covered the topics referenced in the document. Ms. Diaz handed Mr. Quick her keys, stated she quit, and left. Ms. Diaz did not return.

Though the reprimand immediately triggered Ms. Diaz's quit, a number of workplace incidents, experiences, and concerns factored into her decision to leave the employment. Mr. Quick had recently referenced Ms. Diaz's age when speaking with Ms. Diaz. Ms. Diaz is 65 years old. Mr. Quick is 60 years old. On Ms. Diaz's second to last day in the employment, Mr. Quick summoned Ms. Diaz to the back room. As they made their way toward the back room, Mr. Quick asked Ms. Diaz if she could hurry up. Ms. Diaz stated that she was walking as fast as she could. Mr. Quick replied, "Maybe it's time to hand it up, granny." On another occasion, Mr. Quick had commented that Ms. Diaz was the second oldest employee at the Davenport store. On Ms. Diaz's second to last day in the employment, Mr. Quick engaged in inappropriate and vulgar sexual innuendo during conversation with Ms. Diaz and another employee, Marcellus, while Marcellus was stocking Halloween decorations. As Marcellus worked on a decoration labeled "Two Little Girls," Mr. Quick said, "You know what I could do with these Two Little Girls." When Ms. Diaz said she did not know, Mr. Quick replied, "You probably don't want to know." Ms. Diaz knew that Jim Burns, District Manager, was Mr. Quick's immediate supervisor, but elected not to report Mr. Quick's October 10 comments to Mr. Burns or any other company representative.

Ms. Diaz had additional concerns pertaining to workplace safety. Several weeks before Ms. Diaz quit the employment, someone had accidentally left in departing freight truck ladder Ms. Diaz ordinarily used when unloading stacked freight from freight trucks. The ladder was transported to another Big Lots store and not returned to the Davenport store. The Davenport store had step stools available, but due to the height of the stacked freight, these were not an appropriate substitute for the ladder. After the loss of the ladder, Ms. Diaz had to reach up to knock freight that was stacked high in the freight truck from its perch. Ms. Diaz would then have to try to catch the freight as it fell. Ms. Diaz had other safety concerns pertaining to a fire sprinkler system that had been non-functional for years, as well as emergency exits that were either locked or blocked with freight.

REASONING AND CONCLUSIONS OF LAW:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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 Iowa Administrative Code rule 871-24.25.

Iowa Admin. Code r. 871-24.25(22) and (28) provide:

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 "j," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(22) The claimant left because of a personality conflict with the supervisor.

...

(28) The claimant left after being reprimanded.

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.

...

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

Regarding quits due to intolerable or detrimental working conditions, the test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d 213 (Iowa 2005).

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 Ct. 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.*

The weight of the evidence in the record establishes a voluntary quit for good cause attributable to the employer. Had the reprimand been the sole basis for the quit, the quit would have been without good cause attributable to the employer. Though the reprimand was the last straw, the weight of the evidence establishes both unsafe working conditions, as well as intolerable and detrimental working conditions, as factors in Ms. Diaz's decision to leave the employment. Where the testimony between the witnesses differed on material facts, the administrative law judge found Ms. Diaz's testimony to be more credible. The administrative law judge found credible Ms. Diaz's specific and detailed testimony regarding the non-functional sprinkler system, locked and/or blocked emergency exit doors, as well as the unsafe conditions she experienced as a 65-year-old woman unloading freight without appropriate assistance and without the necessary ladder. The administrative law judge also found credible Ms. Diaz's specific and detailed testimony regarding Mr. Quick's October 10 sexually harassing "joke" and regarding Mr. Quick's age-discriminating comment from that same day and on an earlier occasion. Ms. Diaz is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged.

DECISION:

The October 28, 2019, reference 01, decision is affirmed. The claimant voluntarily quit on October 11, 2019 for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn