

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARY A FITCH
Claimant

STORYPEOPLE GRAPHICS INC
Employer

APPEAL 19A-UI-02468-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/17/19
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting – Layoff

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 13, 2019, (reference 01) representative decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 8, 2019. Claimant participated. Employer participated through Ellen Rockne, Owner, along with Eric Stahr. Claimant's Exhibit A was admitted into the record.

ISSUE:

Did the claimant voluntarily quit her employment without good cause attributable to the employer or was she laid off due to lack of work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant had two stints of employment with this employer. Her last stint was when she worked full time as an accountant beginning in September 2016 through February 9, 2019, when she was laid off due to lack of work.

The two owners, Mr. Skye and Ms. Rockne, were going through a six or seven-year long divorce. Mr. Skye managed the day to day operations of the business and claimant considered him to be her supervisor. On February 7, Ms. Rockne called the claimant and told her that the judge's decision on their divorce had been issued and that Storypeople Graphics was now her business. Ms. Rockne was out of town and instructed the claimant to go home and to return to work on Monday for a meeting with her. The claimant was to bring with her to the meeting all of the company records she had at her home. Claimant often worked from home performing her accounting duties so she had a computer as well as numerous documents.

The claimant called Mr. Skye who informed the claimant that the business did not officially transfer to Ms. Rockne until February 16 and she was still his employee and should continue working. Claimant reasonably believed Mr. Skye who had been her supervisor for the last three years. The claimant was not in a position to determine legally who owned the company. Ms. Rockne did not speak to Mr. Skye to have him clarify with the employees who was now in charge.

The e-mails from Ms. Rockne to the claimant make clear that Ms. Rockne did not like or trust the claimant. She specifically accused the claimant of withholding passwords from her. The claimant did not withhold passwords. Ms. Rockne denigrated the claimant's accounting abilities by writing to her on January 30, 2019: "Thanks for catching the missing liability insurance clause. If only you had this attention to detail when Kai was siphoning off all that money! Accountants who have reviewed your work are intrigued. But I'll bet that's not a surprise." She then added a post script to the email saying "I'm not sure why I am using past tense—LOL". Ms. Rockne's email certainly does not come across like that of someone who respected the claimant or planned to keep her employed.

The claimant's makes clear that she was treated differently than Karen by both Ms. Rockne and Eric Stahr. Karen was specifically told the employer wanted her to continue working. Claimant was not told anything at all, other than to bring all of the company property to a meeting on Monday morning.

On Friday February 8, 2019 claimant received a clear email from Mr. Skye terminating her employment due to lack of work. (Claimant's Exhibit A) Claimant was told her last day would be Sunday, February 10. Claimant was under no obligation to tell Ms. Rockne about the email as Mr. Skye and Ms. Rockne should have been communicating all along. The claimant should not be punished for Mr. Skye's and Ms. Rockne's failure to communicate nor should she be forced to make legal conclusions about business ownership.

When the claimant arrived at the meeting on Monday, Ms. Rockne was not present. She had not called the claimant to tell her she had been detained or that Mr. Stahr would be handling the meeting for her.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work and did not voluntarily quit.

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. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

- a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

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. *State v. Holtz*, 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. *State v. Holtz*, Id.

Ms. Rockne was a less credible witness than the claimant. Her assertions that she was going to keep claimant as an employee are not credible in light of her demeaning e-mails to the claimant and her specific request that claimant bring back all company property to the office. Ms. Rockne did not establish that she owned the business as of February 7 and that Mr. Skye had no authority to terminate the claimant. Claimant was laid off due to lack of work, despite Ms. Rockne's allegations to the contrary. Therefore, the separation was attributable to a lack of work by the employer. Benefits are allowed.

DECISION:

The March 13, 2019, (reference 01) decision is reversed. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs