

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHANE W WELSH
Claimant

WALMART INC
Employer

APPEAL 19A-UI-09953JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/17/19
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant, Shane W. Welsh, filed an appeal from the December 6, 2019 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits based upon his separation with Walmart Inc. The parties were properly notified about the hearing. A telephone hearing was held on January 14, 2020. The hearing was held jointly with Appeal 19A-UI-09954-JC-T. The claimant participated personally. The employer, Walmart Inc., participated through Tony Flemming. Claimant Exhibits A-D were admitted. The administrative law judge took official notice of the administrative records including the fact-finding documents. 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 an assistant store manager and was separated from employment on September 27, 2019. Continuing work was available. The claimant last performed work on April 20, 2019. Before his shift ended, he told a co-worker he was done with Walmart. On that day, he began a leave of absence through FMLA.

While the claimant was on the leave of absence, the employer attempted to contact him and he did not reply. While on a leave of absence, the claimant sought medical care for mental health issues (Claimant Exhibit B). The claimant was released from medical care but did not return to the employer.

He cited to stress, and that the workplace was a “hostile, unscrupulous environment to say the least.” He cited to working overnights with a lack of staff, feeling belittled by Mr. Flemming, and cited to Mr. Flemming using profanity at the claimant in 2017. The claimant knew at the beginning of employment that he would be placed on overnight shifts, and had the ability to hire staff for the shifts.

Prior to quitting, the claimant did not request any accommodation from the employer, produce medical documentation stating his doctor was advising him to leave the employment or raise any concerns related to Mr. Flemming or work conditions with human resources or upper management.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant quit the employment without good cause attributable to the employer.

A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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). In this case, the claimant initiated the separation from employment. He may not have said the words, "I quit" or "here is my resignation" but the clear evidence is that he was unhappy with the employer and did not intend to return after April 20, 2019. He told his coworker he was "done" with the employer on his last day of work, did not respond to inquiries by his manager while absent, and then elected not to return upon his leave of absence expiring, even though his doctor had released him to return to work without restrictions. Since the claimant quit the employment and was not discharged, the issue to address is whether he quit for good cause reasons 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.

Iowa Admin. Code r. 871-24.25(21) and Iowa Admin. Code r. 871-24.25(22) 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 "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (21) The claimant left because of dissatisfaction with the work environment.
- (22) The claimant left because of a personality conflict with the supervisor.

The claimant has the burden of proof to establish he 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 not met his burden of proof to establish he quit for good cause reasons within Iowa law.

The claimant cited to stress and health, as well as working conditions, as reasons why he quit the employment.

Iowa Admin. Code r. 871-24.26(6)b 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:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

Inasmuch as the claimant did not inform the employer that he intended to quit because of his stress or health, did not provide medical documentation in support, and did not request any

reasonable accommodation (such as a change of shift, transfer, etc.), he has not established he would be eligible for benefits based upon a separation due to illness.

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. As it relates to his issues regarding his shifts and Mr. Flemming, which existed since 2017, the claimant did not notify the employer that he had issues, so it was unable to address them to allow him to preserve employment.

Based on the evidence presented, the administrative law judge is not persuaded the conversations, words used or conditions between the claimant and the employer ever escalated to a point that would be deemed harassment or a hostile work environment, but rather due to personality conflict. While the claimant may have had personally compelling reasons to quit the employment, he has failed to establish that he quit with good cause attributable to the employer, according to Iowa law. Benefits are denied.

DECISION:

The unemployment insurance decision dated December 6, 2019, (reference 01) is affirmed. The claimant quit the 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.

Jennifer L. Beckman
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Decision Dated and Mailed

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