

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**DEBBIE DAVIS**  
Claimant

**SLB OF IOWA LC**  
Employer

**APPEAL 16A-UI-06722-JCT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/15/16**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 6, 2016, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on July 5, 2016. The claimant participated personally. Chris Brooker, former employee, also testified for the claimant. The employer participated through Karen Beard, human resources. Employer witnesses included John Buckton and Morgan Bouma. 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 a cashier and was separated from employment on April 26, 2016, when she voluntarily quit the employment without notice.

The claimant stated she quit because of discrimination due to being a non-smoker. On the claimant's final day of work, she was working with a co-worker named Amy, and also Morgan Bouma, shift supervisor. The claimant was a non-smoker and both Amy and Ms. Bouma were smokers. The claimant historically felt it was unfair that the employer deviated from the allowed two breaks of 15 minutes and 30-minute lunch, to allow employees who smoked extra breaks for cigarettes. The claimant alleged that the employer would give extra breaks to smokers and that when she tried to request breaks, she was denied. Specifically, on the claimant's final day of work, the claimant was offered to take her morning break by Ms. Bouma, who indicated the claimant declined, because she wanted to take it later. Ms. Bouma then allowed Amy, to take her break ahead of the lunch rush, even though she had not reached four hours yet into her shift. The claimant responded by confronting Ms. Bouma and said "are you fucking serious? Right now?" The claimant then indicated she wanted to quit the employment, to which Ms. Bouma explained if the claimant quit, this was the end of employment and to which the claimant responded, "yeah, I want to fucking leave." Prior to separation, the claimant had discussed her

concerns with her store manager, John Buckton, who in turn, discussed it with management. There was no evidence that the claimant escalated the matters with Mr. Buckton or other management or human resources before quitting.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code § 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(21) 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:

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

Iowa Admin. Code r. 871-24.25(6) 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.

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 871 IAC 24.25. "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). Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). 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).

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 fails to establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment without notice.

The evidence presented is that the claimant became upset because a co-worker who worked less hours than the claimant, was permitted to take a smoking break early. It cannot be ignored that prior to the co-worker stepping outside for the cigarette break, that the claimant declined the request to take her own break at that time. So it was not a case of the employer only permitting smokers to take breaks, but rather the claimant declined her break and the employer continued on to breaking employees ahead of the lunch rush. The claimant's concerns regarding disparate treatment may have warranted investigation, but the claimant's response of cursing and quitting without notice precluded an opportunity for the employer to resolve any issue. A claimant with work issues or grievances must make some effort to provide notice to the employer to give the employer an opportunity to work out whatever issues led to the dissatisfaction. Failure to do so precludes the employer from an opportunity to make adjustments which would alleviate the need to quit. *Denvy v. Board of Review*, 567 Pacific 2d 626 (Utah 1977). Based on the evidence presented, the administrative law judge concludes that while the 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 June 6, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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