

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROSALIO J BUENROSTRO
Claimant

BAINBRIDGE CONSTRUCTION LLC
Employer

APPEAL 15A-UI-09198-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/04/15
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 12, 2015, (reference 02) unemployment insurance decision that denied benefits based upon the determination he voluntarily quit his employment because he was unhappy with his pay which is not a good-cause reason attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on September 2, 2015. Claimant Rosalio Buenrostro participated on his own behalf and through interpreter Omar, employee number 6840, from CTS Language Link. Employer Bainbridge Construction, LLC participated through President/Owner Troy Bainbridge and Secretary Colleen Bainbridge.

ISSUE:

Did the claimant voluntarily quit his 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 laborer beginning March 30, 2015, and was separated from employment on July 27, 2015, when he quit. The claimant was hired at a wage of \$12.00 an hour. He would drive a half hour to Kingsley, Iowa and from there he would be driven by his supervisor Sean Bainbridge (Sean) or another employee to the job site which could be up to two hours away. The employer compensates the employees who drive to the job site, but not the employees who ride along with the driver. The claimant was not compensated for his travel time.

The claimant found another job at which he would be paid a wage of \$15.00 an hour. He told President/Owner Troy Bainbridge (Troy) that he was going to quit because he was not being paid enough. Troy offered the claimant a raise to \$15.00 an hour. The claimant accepted Troy's offer and believed he was going to be paid for the time he was traveling in the vehicle to the job sites.

One week before he quit, the claimant asked to meet with Troy in Waterloo to discuss his dissatisfaction with his pay. Troy did not meet the claimant at the agreed upon location. The claimant quit coming to work on July 28, 2015 so he could look for another job.

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.

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(3), (18) and (30) 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 § 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 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:

(3) The claimant left to seek other employment but did not secure employment.

(18) The claimant left because of a dislike of the shift worked.

(30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

Iowa Admin. Code r. 871-24.26(1) and (3) provide:

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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

(3) The claimant left due to unlawful working conditions.

The 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).

The claimant has argued that his job conditions were unlawful as he should have been paid for his travel time. However, an employer is not required to compensate an employee for travel time to a worksite when that travel is done in transportation furnished by the employer, the employee is not performing any work during that time, and it is done as a convenience for the employee and not as the required form of travel. Iowa Code § 91A.13. In this case, the claimant was offered the option of traveling with his supervisor or other co-workers for his convenience because he did not want to use his own vehicle. As the driver of the vehicle changed, it does not appear this was the required form of transportation. Additionally, the employer paid the employee who was driving to the worksite for his or her time. The claimant was not being subjected to unlawful working conditions.

The claimant has also argued the employer altered the contract of hire. The claimant contends in May 2015 the employer agreed to pay his travel time at the same time it agreed to his increased wage demand. The employer denies it agreed to compensate the claimant for his travel time.

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 there was no agreement to pay for the claimant's travel time. The employer has practice of not paying employees for the time they ride to a work site. Additionally, it is not believable that this agreement would exist and the claimant would continue to work for the employer for two months without receiving the additional compensation. The employer did not change the contract of hire, other than to pay the claimant more hourly.

The claimant quit his employment because he did not like the hours and did not believe he was being properly compensated. He felt his salary was not competitive with wages of other construction companies and he wanted to find new employment. The claimant was also missing time with his family due to the travel requirements of his position. While the claimant's decision to leave 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 August 12, 2015, (reference 02) 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 he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/css