

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JAY E JOHNSON**  
Claimant

**HGI LAKESIDE LLC**  
Employer

**APPEAL 17A-UI-00852-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/18/16  
Claimant: Respondent (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the January 11, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 14, 2017. The claimant participated personally. The employer participated through Jackie Boudreaux, Hearing Representative. Employer witnesses included Sondra Romeo, Director of Human Resources and Brad Ainsworth, Hotel Director. Employer Exhibit 1 was admitted into evidence. 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.

**ISSUES:**

Did the claimant voluntarily quit the employment with good cause attributable to the employer?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any charges to the employer's account be waived?

**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 valet parker and was separated from employment on December 10, 2016, when he quit the employment (Employer Exhibit 1). Continuing work was available.

The claimant began work in September 2015, and was aware that he would be spending time outdoors, parking and retrieving vehicles, even in winter weather. When the claimant was not moving cars, he was in a foyer/entryway that allowed quick access to vehicles. The employer did not furnish heat in the space, and according to the claimant, it would become uncomfortably cold, inasmuch as he could see his breath, in between parking vehicles. The claimant brought in a personal space heater to stay warm. The claimant did not raise concerns to the employer

in 2015, but learned the space had previously (before his employment) contained heat. Consequently, in November 2016, he asked his manager, Brad Ainsworth, if there could be some heat in the valet section. Mr. Ainsworth's office was housed in another portion of the employer's premises and heated. Mr Ainsworth reported he would look into the matter. No changes were made but said there was also a running van the claimant could warm up in if needed. The claimant determined it was too cold and too uncomfortable to continue another winter without heat, and tendered his resignation. The claimant acknowledged last winter catching a bad cold because of the conditions and not wanting to get sick again. The claimant did not explain why he was resigning in his letter, nor did Mr. Ainsworth question the claimant upon resigning, although he stated he was surprised by the quitting. Separation subsequently occurred.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,310.00, since filing a claim with an effective date of December 18, 2016. The administrative record also establishes that the employer did not participate in the January 10, 2016 fact-finding interview or make a witness with direct knowledge available for rebuttal. Larry Porter, representative for the employer, was called for the fact-finding interview but did not participate. Mr. Porter did not attend the hearing or offer a written statement as to why he did not attend the scheduled fact-finding interview. No written statement in lieu of participation was furnished for participation purposes. Only the employer's initial claim was submitted to the agency prior to the fact-finding interview.

#### **REASONINGS AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was with 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. 871-24.26(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.

Iowa Admin. Code r. 871-24.26(4) 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:

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

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). In the case of a resignation because of suspected illegal or unethical corporate behavior, the proper inquiry is whether a person of reasonable prudence would, in like circumstances, believe that improper or illegal activities were occurring at the place of work and that these activities necessitated the individual's quitting. *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 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 claimant 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 intolerable and/or detrimental working conditions that would cause a reasonable person to quit the employment.

In this case, the claimant performed duties related to being a valet parker. When the claimant was not moving vehicles, he was housed in an indoor foyer area, accessible to vehicles. The claimant credibly testified that the only heat in his work office/space was a personal space heater that he brought, and that due to coldness, the claimant had become sick in the past and could see his breath indoors due to the temperature. Cognizant that a valet's work would include exposure to the cold Iowa weather during the winter, the administrative law judge is not persuaded the claimant should be expected to wait between moving vehicles, in an indoor space that lacks any heat or alternately rely upon a running van for heat. When the claimant made the employer aware of concerns, no action was taken. Therefore, based on the evidence presented, the administrative law judge concludes the employer's failure to supply adequate heat in an office space for the claimant in winter weather, to the degree he could see his breath, created a detrimental working condition, causing his resignation. The claimant has established good cause attributable to the employer for quitting the employment. Benefits are allowed.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot.

**DECISION:**

The January 11, 2017, (reference 01) decision is affirmed. The claimant quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible. The claimant has not been overpaid benefits. The employer is not relieved of charges.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/rvs