**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**MATTHEW R MURFIELD**
Claimant

**SMITH CO MFG INC**
Employer

**APPEAL NO: 18A-UI-05782-JC-T**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 04/29/18**
**Claimant: Appellant (1)**

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 May 16, 2018, (reference 01) unemployment insurance decision that denied benefits based upon separation. The claimant was properly notified about the hearing. A telephone hearing was held on June 12, 2018. The claimant participated personally. The employer participated through Teressa Bleil, human resources manager. Ryan Beemer, plant manager, also testified.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Claimant Exhibit A was admitted into evidence. 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 or was the claimant discharged for disqualifying job-related misconduct?

**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 painter beginning in 2005 and was separated from employment on April 25, 2018, when he quit the employment. Continuing work was available.

Prior to his shift starting on April 25, 2018, the claimant had been off work due to a personal back injury and visited a chiropractor. He had returned to work without restrictions and brought in a doctor's note for his manager, Ben Murfield, who is also his cousin. He placed the doctor's note on Mr. Murfield's desk and assumed he had been informed about the claimant's absences through management when the claimant had called off his prior shifts. Mr. Murfield did not see the doctor's note or know the extent of the claimant's absences before he started the shift meeting that day.

During the meeting, which lasted approximately fifteen minutes, the claimant was assigned to go to the "blast" booth. The blast booth was more physically taxing than the usual painter's booth and the claimant became upset because he had just returned after having a sore back. The claimant did not say anything to his manager during the meeting or thereafter, or ask to swap positions with a co-worker to avoid the physical demands of the blast booth (even though his doctor had released him without restrictions). Rather, he did not inform management he was leaving and left the premises, still clocked in. He began walking down the road from the employer's location in Le Mars towards Sioux City and called his friend to pick him up.

Upon Mr. Murfield and Mr. Beemer seeing the claimant's doctor's note and realizing he had been assigned the blaster booth, they went to look for the claimant, to reassign him to a new position, recognizing that even though he didn't have doctor imposed restrictions, that the blast booth would not be the preferred job duty for someone recovering from back pain. They saw the claimant was still clocked in but could not locate him. They waited and even looked for him in the restroom. The employer then tried to call the claimant, who saw the phone call but did not take the call. The employer even drove down the road away from the premises to see if the claimant was there but could not locate him (at this point, his ride had located him). The employer determined, consistent with its policy, that the claimant had quit his position when he walked off the job without permission. When the employer finally made contact with the claimant later that day, he was informed of the separation.

The claimant argued he was treated differently than two co-workers who he had believed walked off the job but remain employed. The employer refuted the claimant's assertion that he was treated differently, based upon the other two employees having permission to leave shifts and the claimant did not notify anyone of his intended absence. The employer acknowledged the claimant had previously had "issues" involving his temper as well.

**REASONING AND CONCLUSIONS OF LAW:**

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

An unemployed person who meets the basic eligibility criteria receives benefits unless they are disqualified for some reason. Iowa Code § 96.4. Generally, disqualification from benefits is based on three provisions of the unemployment insurance law that disqualify claimants until they have been reemployed and they have been reemployed and have been paid wages for insured work equal to ten times their weekly benefit amount. An individual is subject to such a disqualification if the individual (1) "has left work voluntarily without good cause attributable to the individual's employer" Iowa Code § 96.5(1) or (2) is discharged for work –connected misconduct, Iowa Code § 96.5(2) a, or (3) fails to accept suitable work without good cause, Iowa Code § 96.5(3).

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. 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). Furthermore, 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 a case where a claimant walked off the job without permission before the end of the shift, saying that he wanted a meeting with management the next day, the Supreme Court ruled that this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. *Peck v. Emp't Appeal Bd.*, 492 N.W. 2d 438 (Iowa Ct. App. 1992). The claimant's case at hand is distinguishable from *Peck* inasmuch as the claimant did not notify the employer that he would be leaving early or indicate at the time he was leaving, his plan to return or wanting to follow up with management upon cooling down. Rather, the claimant simply left the premises without notifying the employer that he was upset or planned to return. The administrative law judge is persuaded the claimant's conduct on April 25, 2018 supports an intent to sever the employment with an overt action. Therefore, the administrative law judge concludes the claimant voluntarily quit the employment.

Iowa Code § 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(27) 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:
>
> (27) The claimant left rather than perform the assigned work as instructed.

When a claimant quits the employment, he has the burden of proof to establish that it was for good cause attributable to the employer according to Iowa law. Iowa Code § 96.6(2). 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." "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).

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

While a claimant does not have to specifically indicate or announce an intention to quit if his 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."

In this case, the claimant became upset when he assumed his manager knew he had been off work and assigned him to the physically demanding "blast booth" position on April 25, 2018. An employer has the right to allocate personnel in accordance with the needs and available resources. *Brandl v. Iowa Dep't of Job Serv.*, (No. _-___/__-____, Iowa Ct. App. filed ___, 1986). The undisputed evidence is the claimant had been off work previously due to a personal back injury but had returned without any physical restrictions on April 25, 2018. The blast booth was part of the claimant's job description but both parties agreed that it was physically taxing in comparison to the paint booth. The claimant did not make direct contact with his manager upon his return from being off at work or during the meeting when his manager assigned him to the blast booth to alert him of a healing back issue. He assumed his manager knew he had been previously off work due to his back and then became angry that he would assign him to the blast booth with such knowledge. His assumption was erroneous.

The credible evidence establishes the claimant's manager was unaware that he been off related to his back, and upon seeing a doctor's note on the desk after the meeting, he went to reassign the claimant, who had already left angry. It should be noted even if the claimant's manager had assigned the blast booth to him, there were no medical restrictions stating he could not perform the job; it was simply a personal preference. Here, the claimant could have communicated with his manager his concern with the blast booth or find another member of management for reassignment. Instead, the claimant left without permission or notifying anyone that he was upset and angry by the assignment. He was also unresponsive when the employer attempted to contact him. If the claimant had a legitimate work concern, he did not make the employer aware of it and did not give the employer an opportunity to resolve it. Therefore, the administrative law judge concludes that based upon the evidence presented, the claimant's leaving the employment may have been based upon good personal reasons, but it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

**DECISION:**

The May 16, 2018, (reference 01) 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.

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Jennifer L. Beckman
Administrative Law Judge

_____
Decision Dated and Mailed

jlb/scn