IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

JODY J SUNDVOLD Claimant **JELD-WEN INC** Employer	**APPEAL 16A-UI-10040-JCT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/21/16** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 8, 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 September 29, 2016. The claimant participated personally. The employer participated through Cole Johnson, human resources. Employer exhibit 1 and claimant exhibit A were received 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?

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 maintenance manager and was separated from employment on June 26, 2016, when he quit the employment. Continuing work was available.

In the claimant's capacity, he was aware that he would have to sometimes work mandatory overtime, and as a salaried manager, he was not compensated with overtime pay. The claimant had periodically worked overtime without issue until May 2016, during a period of transition between general managers. As a result of business conditions, a machine being down and preparing for a vice president visit, the claimant began logging and tracking his hours. He reported working 80 to 93 hour weeks repeatedly. The claimant made his immediate manager, Scott Pease, aware of his hours, and requested a day off during the week of June 13, 2016. The request was denied by Mr. Pease, stating the claimant was needed. Prior to the claimant quitting, there had been a staff meeting expressing appreciation for the long hours and discussion that they would need to continue for the time being. There was no indication hours would be decreasing and so on June 26, 2016, the claimant called Mr. Pease and informed him of his need to quit, citing the hours and pressure associated with the job. Mr. Pease did not attend the hearing or submit any written statement in lieu of participation.

The employer reported the claimant did not call or show on June 27, 2016, called off on June 28, 2016, and then had three days of no call/no show on June 29, 30 and July 1, 2016, before contacting the employer to separate on July 3, 2016 to retrieve/return items. Per the employer's policy, three days of no call/no show was deemed a voluntary quit by job abandonment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment 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(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). 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 establishes intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment without notice.

The evidence is disputed as to when the claimant notified his manager, Scott Pease, of his intentions to resign, or was a no call/no show for three days before resigning. It was also Mr. Pease whom the claimant had raised concern about his hours before resigning and had requested and subsequently denied a day off. Mr. Pease did not attend the hearing or offer a written statement. When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). Mindful of the ruling in *Crosser*, *id.,* and noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

The credible evidence presented is that the claimant was hired with an expectation of some mandatory overtime. As a salaried employee, the claimant was not compensated if he had to work beyond his work week. Although the claimant did not have the advice of his physician to quit the employment, a reasonable lay person or employer would know that working eighty to ninety hour weeks repeatedly would very likely create an intolerable strain on even an otherwise healthy worker's physical and mental health. Further, when the claimant attempted to notify his manager that the hours were too much, and request a day off, he was denied. The employer's expectation that the claimant work eighty hours per week for an indefinite period (regardless of additional compensation for his efforts) created an intolerable and detrimental work environment. Thus, the claimant has established good cause reasons for leaving the employment. Benefits are allowed.

DECISION:

The September 8, 2016, (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Jennifer L. Beckman
Administrative Law Judge

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Decision Dated and Mailed

jlb/rvs