

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SARAH N LEWIS
Claimant

SHELL ROCK HEALTHCARE CENTER
Employer

APPEAL 19R-UI-08679-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/25/19
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant, Sarah N. Lewis, filed an appeal from the September 13, 2019 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about a first hearing on October 14, 2019. The claimant/appellant failed to appear and the appeal was dismissed. After successfully requesting reopening to the Employment Appeal Board (“EAB”), the matter was remanded for a new hearing. After proper notice, a telephone hearing was held on December 2, 2019. The claimant participated personally. The employer, Shell Rock Healthcare Center, participated through Christina Hubka, executive director. Suzette Eveland, DON, also testified.

Employer Exhibits 1-4 were admitted. During employment and currently, the claimant goes by the name “Sarah Minch”. As such, documents referring to “Sarah Minch” are referring to the claimant. 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 CNA (certified nursing assistant) and was separated from employment on May 28, 2019, when she quit the employment without notice. Continuing work was available.

When the claimant was hired, she worked full-time during the second and third shifts. The claimant requested to no longer work the third shift because of childcare issues, and the employer accommodated the request, but it caused the claimant to be reduced to a part-time employee, thereby losing employee benefits. The employer then moved the claimant back to a full-time status and explained to the claimant that PTO hours may be used to supplement hours to make sure she met the required hours to remain full-time status (Eveland testimony). The claimant confronted the employer for applying PTO to her schedule without her express

permission. The confrontation occurred on May 28, 2019 in a hallway. The employer requested the claimant meet with Ms. Eveland and Ms. Hubka, and the claimant refused. Instead, she tendered her resignation, and separation ensued.

The claimant asserted she quit because of “poor management” and that she had been targeted since January 2019 when she had reported a co-worker as being unhelpful. In January 2019, she had also tendered her resignation but rescinded it upon talking with the employer. She elected not to meet with the employer on May 28, 2019 because she didn’t feel like it would make a difference. The claimant had previously voiced concerns about Ms. Eveland and the PTO to the office manager, but not human resources.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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(22) 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:

(22) The claimant left because of a personality conflict with the supervisor.

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

The claimant has the burden of proof to establish she quit with good cause attributable to the employer. 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. 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." *Id.* "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). While a claimant does not have to specifically indicate or announce an intention to quit if her 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 her 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."

The administrative law judge concludes the evidence presented does not support the claimant's feelings of being targeted for reporting an uncooperative employee to the employer in January 2019. Based on the evidence presented, the administrative law judge is not persuaded the conversations, words used or conditions between the claimant and employer were inappropriate, nor were they ever escalated to a point that would be intolerable working conditions or a hostile work environment, but rather due to personality conflict.

In this case, the employer reasonably attempted to accommodate the claimant's request for a schedule change due to childcare issues. As a result of the change in shift at the claimant's request, she was not working sufficient hours to retain her full-time status and employee benefits. The employer then tried to accommodate the claimant's desire to remain eligible for benefits by offsetting hours not worked with accumulated PTO. When the claimant raised issue about the employer applying PTO to her shifts missed, the employer asked the claimant to meet with human resources and her manager on May 28, 2019 and the claimant refused. The employer attempted to take action to address the claimant's concerns and she did not make a good faith effort to preserve the employment or allow the employer to resolve the concerns because she quit without notice instead.

While the claimant may have had personally compelling reasons to quit the employment, she has failed to establish she quit the employment with good cause attributable to the employer according to Iowa law. Accordingly, benefits are denied.

DECISION:

The September 13, 2019 (reference 01) initial decision is affirmed. The claimant quit 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.

Jennifer L. Beckman
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Decision Dated and Mailed

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