

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MEGAN PEPPERS

Claimant

JAM EQUITIES OF DUBUQUE LLC

Employer

APPEAL 21A-UI-12858-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/28/21

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit

Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 21, 2021, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing scheduled to occur on August 2, 2021 at 2:00 p.m. The employer requested the hearing be rescheduled because its witnesses were attending mandatory work training. The administrative law judge granted this reschedule request.

A telephone hearing was held on August 27, 2021. The hearing had to be postponed to August 31, 2021 because the employer's witnesses were in another hearing conducted by Administrative Law Judge Carly Smith. This administrative law judge covered exhibits prior to postponement. Exhibits 1, 2, 3, and A were received into the record.

The hearing was conducted as planned on August 31, 2021. The claimant participated and testified. The employer participated through President Asif Poonja and Human Resources Director Shana Fazal. The employer was represented by Erika L. Bauer, attorney at law.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without 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 general manager from July 21, 2020, until she was separated from employment on September 12, 2020, when she quit. The claimant reported directly to Regional Manager Ricco Mitchell. As general manager, the claimant is empowered to hire, fire and discipline subordinates working in the store. The claimant has to drive one and a half hours each day to commute to work and back home. The claimant would occasionally work 14 hour days in her role. The claimant was aware of the commute time and schedule when she accepted the position.

The employer provided a copy of its company handbook. (Exhibit 1) The company handbook prohibits criminal activity and harassment.

The claimant had a surgery on three herniated discs in her upper back and neck. After the surgery, the claimant cannot turn her neck. This condition made the claimant wary about having the arguments with subordinates recounted below because she believed one punch could paralyze her.

On September 9, 2020, at 9:30 a.m., a subordinate Tony (last name unknown) arrived late for his shift that was scheduled to begin at 9:00 a.m. Shortly after arriving, Tony wanted to take a cigarette break. The claimant denied him the ability to take the break because he had just arrived. In response, Tony became irate and started yelling at the claimant. Tony said, "Bitch. Fuck you. I'll fuck you up bitch. Bitch you stop telling me what to do. I don't fucking care. Back up. I'll fuck you up." At times, Tony was nose to nose with the claimant. The claimant called the police, but they never responded to the call. Tony eventually just walked off the job.

About thirty minutes later on September 9, 2020, another crewmember named Cathy became irate about how the claimant had responded to Tony. The claimant sent Cathy home. Although Mr. Poonja gave the claimant the authority to terminate Cathy, the claimant wanted to give her the opportunity to "cool off." The claimant also terminated Jamarina Logan, another crew member, that same day. The claimant contacted President Asif Poonja about what had occurred. The claimant told Mr. Poonja she felt like quitting. Mr. Poonja was able to calm the claimant down by emphasizing that the claimant should talk to Mr. Mitchell on the following day. These decisions to manage an unruly staff, left just the claimant and one subordinate to staff the store until it closed later that night.

On September 12, 2020, Ms. Logan returned to the store. Ms. Logan said she had been directed to return to work by another manager. The claimant told Ms. Logan that she was not authorized to return to work for the store. Ms. Logan said, "I'm working anyway. No one told me I was fired." Ms. Logan approached the claimant and closed the distance between them, in order to provoke a response. The claimant called the police to have Ms. Logan escorted off of the property. When the police arrived, Ms. Logan turned around and threw a large glass of tea into the claimant's face. The police officers then fought with Ms. Logan in an effort to restrain her. Ms. Logan's brother, sister and mother were in the employer's parking lot. As the claimant was speaking with the police about pressing charges, Ms. Logan's family was making vague threats about knowing where the claimant worked and when her shift ended. The claimant noticed on that day that her truck had been keyed. It was a deep six inch scratch under the passenger side window of the claimant's truck. This led the claimant to be concerned that Ms. Logan's family or some other disgruntled employee could sabotage her truck by pouring sugar into her gas tank. The claimant's assistant manager, Beatrice, criticized how the claimant dealt with Ms. Logan's behavior on that day. The claimant believes Beatrice and Ms. Logan are friends. After this commotion had ended, the claimant still had to operate the store with two new hires. On her way home, the claimant and Mr. Poonja spoke for most of her one and a half hour commute. During that conversation, Mr. Poonja told the claimant that he could provide a police escort at night to provide security.

The employer provided text messages exchanged by Mr. Poonja and the claimant on September 12, 2020. (Exhibit 2) The claimant began this conversation with a text message informing Mr. Poonja that someone had scratched her truck in the parking lot. The claimant attached a picture of the scratch, which was located under the passenger side window. The claimant also requested Beatrice be demoted to a crewmember. Mr. Poonja suggested the

claimant talk to Mr. Mitchell about those things and asked the claimant how she was doing working the shift. In response, the claimant said she was considering resigning because of the things that Ms. Logan's family had said to her earlier that day. Mr. Poonja assured the claimant that the employer would take care of her and they would come up with a "game plan" with Mr. Mitchell. At 8:03 p.m., Mr. Poonja asked the claimant if she had talked to Mr. Mitchell. The claimant said she had talked to Mr. Mitchell. Mr. Poonja asked the claimant how she was doing. The claimant never responded to this message.

On September 13, 2020, the claimant told District Manager Kacy Smith that she was resigning from her position with the employer. The claimant provided a document informing the employer she resigned on that day. (Exhibit A)

The employer provided text messages exchanged by Mr. Poonja and the claimant on September 13, 2020. (Exhibit 2) Mr. Poonja asked the claimant to give him a call and emphasized it was urgent. The claimant said she was talking to her sister and added she would call him in a minute. The claimant asked Mr. Poonja if Mr. Mitchell had quit. Mr. Poonja mentioned that he was dealing with a death in his family. About an hour later, Mr. Poonja sent a text message asking the claimant what was going on. Mr. Poonja then said they needed to come up with a "game plan" and talk next week. Mr. Poonja promised that Ms. Smith would help the claimant train the new hires. Mr. Poonja also promised to pay the claimant \$5,000.00 additional in salary. He asked the claimant to give him a call back. The claimant did not call him back.

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.

Iowa Code section 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.

Claimant had an intention to quit and carried out that intention by tendering a written resignation. As such, 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).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)("The good cause attributable to the employer need not be based upon a fault or wrong of such employer."). Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956).

Iowa Admin. Code r. 871-24.25 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:

- (21) The claimant left because of dissatisfaction with the work environment.
- (27) The claimant left rather than perform the assigned work as instructed.
- (30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.
- (37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

Iowa Admin. Code r. 871-24.26 (2) and (4) 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:

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

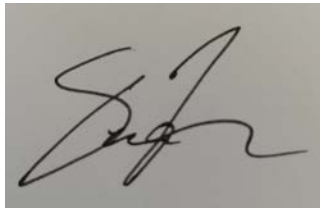
The claimant's working conditions were not such that a reasonable person would have felt compelled to quit. The administrative law judge is not diminishing what the claimant endured during that final week. The standard for intolerable working conditions is a high one. The administrative law judge finds the claimant's decision to leave was not reasonable given the support she was offered by Mr. Poonja. In particular, the claimant was offered a police escort a

night for extra security. There also is not anything in the record to suggest the claimant's working conditions were unsafe at the time the claimant decided to leave. Mr. Poonja had offered her more pay and the beginnings of an arrangement to ensure her security. The claimant acknowledges that she did not contact Mr. Poonja about the particular things that could be provided.

Furthermore, the claimant gives other rationales that are generally disqualifying such as the commute distance, despite the fact she knew it would be a long commute when hired. See Iowa Admin. Code r. 871-24.25 (35). While claimant's leaving 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 are denied.

DECISION:

The May 21, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left her 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.



Sean M. Nelson
Administrative Law Judge
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September 20, 2021
Decision Dated and Mailed

smn/scn