

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEREMY T PENISTON
Claimant

KIMBERLY CHRYSLER PLYMOUTH INC
Employer

APPEAL 15A-UI-13808-JP-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 12/21/14
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 11, 2015 (reference 12) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 7, 2016. Claimant participated. Employer participated through representative Diana Perry-Lehr and service manager Shawn Tygart. Representative Christina Grill registered on behalf of the employer but did not attend the hearing.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a service technician from January 2015 and was separated from employment on November 17, 2015; when he quit.

Claimant initially started with BMW division but on June 29, 2015 he went to the Nissan division where Mr. Tygart became his supervisor. When claimant came to Nissan, he was paid on a flat rate per vehicle; which depended on the type of work. Most line technicians are paid a flat rate per vehicle. The more experience an employee has, usually the quicker the employee can get through the work. On November 17, 2015, claimant called Mr. Tygart and told Mr. Tygart that things were not working out at the employer and he could not afford to continue working for the employer with the money he was making in the shop. Mr. Tygart understood that claimant was resigning. Mr. Tygart accepted claimant's resignation. Around the middle of August 2015, claimant complained about the amount of money he was making. Mr. Tygart told claimant to come to him and he would try to make sure claimant had work to do. The employer has a drawer that has tickets for vehicles that employees can work on. Mr. Tygart tried giving claimant more work. There are technicians in the shop that were making 40 to 60 flat rate hours per week. Claimant would come to work late and leave early on occasions. Claimant would also be on his phone while at work. There was plenty of work available for claimant.

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. Benefits are denied.

It is the duty of an administrative law judge and 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, as the finder of fact, 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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 evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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. 871-24.25(13) and (37) 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 § 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 § 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay 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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

When claimant came to the Nissan area for the employer in June 2015, he was to be paid a flat rate per vehicle he worked on. Claimant was aware of this pay structure. After the first couple of paychecks, around August 2015, claimant complained to his direct supervisor about the amount of money he was making. Claimant's argument that he had to quit because he did not have enough work and thus not making enough money is unpersuasive. When claimant complained about the amount of money he was making, Mr. Tygart told claimant to come to him and he would try to make sure claimant had work to do. Mr. Tygart testified he tried to give claimant more work but claimant would come to work late and leave early on occasion. Mr. Tygart also testified claimant would be on his phone instead of working. Mr. Tygart testified there was plenty of work available for claimant; there were technicians in the shop making 40 to 60 flat rate hours per week. While claimant's leaving the employment 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 must be denied.

DECISION:

The December 11, 2015 (reference 12) unemployment insurance decision is affirmed. 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.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/can