

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**COLLEEN E EASTWOOD**  
Claimant

**JERRY M MCMAHON**  
Employer

**APPEAL 20A-UI-06165-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/03/20  
Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

On June 16, 2020, Colleen Eastwood (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated June 11, 2020 (reference 01) that denied benefits.

A telephone hearing was held on July 28, 2020. The parties were properly notified of the hearing. The claimant participated personally and was represented by Attorney Andy LeGrant. Former coworker Christine Johnson participated as a witness for claimant. Jerry McMahon (employer/respondent) participated by Mr. McMahon, the owner. Appearing as witnesses for the employer were Office Manager Joel Ulstead, Production Worker Cindy Paulson, and Mr. McMahon's son, Ethan McMahon.

Neither party offered any exhibits. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer full-time as a crew chief. Employer's business does fire, water, and mold remediation. Claimant's first day of employment was August 26, 2019. The last day claimant worked on the job was May 1, 2020. Claimant's immediate supervisor was McMahon. Claimant separated from employment on May 1, 2020. Claimant resigned on that date.

Claimant resigned at that time because she did not feel safe or comfortable in the workplace. The most recent incident leading to the resignation occurred on that date. McMahon was upset with claimant Johnson, and Paulson, as he did not believe they were performing a task assigned to them correctly. McMahon took the documents the three were working on to the office and said he would complete the task himself.

Claimant testified McMahan was screaming and cursing during this time and was so mad his face was red. She testified McMahan called her “a fucking liar” during this incident. Claimant did not allege any threats or physical contact with her or others were made at that time. About 15 minutes later, claimant went to speak with McMahan in the office. At that time, McMahan told claimant she had better return to work and she would be discharged if she left work. Claimant resigned at that time.

Claimant testified McMahan’s conduct on May 1, 2020 frightened her, based in part on past events. Approximately one or two weeks earlier, claimant and several other employees had witnessed McMahan choking his 16-year-old son at work. Claimant testified Ethan later told her his father had choked him because Ethan had mocked him. Claimant testified she and other employees were generally used to McMahan raising his voice and using profanity, as it was not an uncommon occurrence. However, Claimant had difficulty recalling other specific incidents where McMahan had become angry, raised his voice, and/or used profanity.

Johnson generally corroborated claimant’s testimony regarding McMahan’s temper, the events of the day claimant resigned, and the incident with Ethan. On the other hand, McMahan, Ulstead, Paulson, and Ethan generally denied McMahan ever raised his voice or used profanity at work; had done so on the day in question; or had physically assaulted Ethan at work or at any other time. Of note, Ulstead’s testimony here was somewhat inconsistent. He initially denied McMahan ever raised his voice or used profanity in the workplace. He later testified he had heard McMahan raise his voice but not scream or yell. Ulstead and Paulson are still employed by McMahan. The two of them, along with Ethan, were present in the same room as him during the hearing.

McMahan testified claimant had threatened to quit several times in the past, saying she “just couldn’t take it anymore.” However, she was not specific about what was troubling her. McMahan testified that he did not believe the incident on May 1 was “a big deal,” and generally characterized claimant as being melodramatic and hypersensitive. Employer did not have a formal HR representative and complaints were generally received by McMahan.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons set forth below, the decision dated June 11, 2020 (reference 01) that denied benefits is AFFIRMED.

Iowa Code section 96.5(1)a 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. 871-24.26 provides in relevant part:

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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. 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). 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).

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.*

Here, the administrative law judge generally found the testimony of the parties and witnesses to be credible and reliable, with a few exceptions noted below. As such, it is very difficult to find one party's version of events more believable than the other's. The administrative law judge finds the truth lies somewhere between the party's version of events, although it is difficult to pinpoint what the truth is based on the evidence presented. For example, the administrative law judge does not find believable McMahon's testimony that he had never raised his voice or used profanity in the workplace. This conclusion is reached in part based on Ulstead's inconsistent testimony on that issue. On the other hand, the administrative law judge finds claimant's characterization of McMahon's conduct to be exaggerated. This conclusion is reached in part to claimant's difficulty in recalling specific incidents where McMahon had raised his voice or used profanity.

With regard to whether McMahon used profanity during the incident in question and whether he had previously assaulted his son at work, the administrative law judge finds the evidence is in balance. Claimant and Johnson credibly testified those events did occur, while McMahon and employer's witnesses credibly testified they did not. The administrative law judge notes employer's witnesses had motivation to minimize or mischaracterize the events in question, given

they continue to be employed there and in Ethan's case are related to McMahan. The administrative law judge also notes the pressure employer's witnesses must have felt testifying about their employer while in the same room as him. By the same token, the administrative law judge cannot say claimant and Johnson were without motivation to present facts in a light most favorable to McMahan's claims. Both are no longer employed by McMahan and clearly felt slighted by employer.

The administrative law judge finds employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried her burden of proving the voluntary leaving was for good cause attributable to employer. The undisputed facts are that claimant and others were performing a task; McMahan was displeased with their performance of that task and informed them of his displeasure; and McMahan then took the work to his desk to complete it. Claimant then came to McMahan's desk shortly thereafter to speak to him; at that time McMahan said something to the effect of she had better return to work; and claimant then resigned.

As noted above, the administrative law judge finds McMahan had raised his voice and used profanity at some point, although it is unclear when, to what extent, and toward whom. The administrative law judge cannot find that McMahan cursed directly at claimant on the day in question; assaulted his son at work; or was regularly angry and abusive toward claimant and others. Based on the evidence presented, the administrative law judge cannot find that the working conditions were so intolerable or detrimental that claimant's resignation was with good cause attributable to employer.

**DECISION:**

The decision dated June 11, 2020 (reference 01) that denied benefits is AFFIRMED. Claimant's separation from employment was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
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Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

August 7, 2020  
Decision Dated and Mailed

abd/scn

***Note to Claimant:***

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.