

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NATALIE TUCKER
Claimant

CITY OF RYAN
Employer

APPEAL 20A-UI-00345-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/15/19
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On January 13, 2020, City of Ryan (employer/appellant) filed an appeal from the January 6, 2020 (reference 01) unemployment insurance decision that determined Natalie Tucker (claimant/respondent) was eligible to receive unemployment insurance benefits.

A telephone hearing was held on April 21, 2020. The parties were properly notified of the hearing. Employer participated by Mayor Mike Corcoran and was represented by Attorney James T. Peters. Claimant participated personally and was represented by Attorney Ann Brown.

Claimant's Exhibit 1 was admitted. Official notice was taken of the administrative record, including claimant's payment history on the unemployment insurance system and the fact-finding worksheet.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

FINDINGS OF FACT:

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

Claimant worked for employer as a part-time clerk. Claimant's first day of employment was October 26, 2005. Claimant's immediate supervisor was Corcoran. Claimant separated from employment on December 4, 2019. Claimant submitted a letter of resignation to Corcoran on December 3, 2019, giving an effective date of January 3, 2020. Corcoran informed claimant on December 4 that he was accepting her resignation effective immediately.

Claimant resigned due to a pattern of sexual harassment she was subjected to by City Supervisor Shawn Curley. The last day claimant was physically present at the job working was October 3, 2019. On that day, Curley asked claimant if she was wearing a new bra and made comments about the appearance of her breasts. Later that day he grabbed her shirt and suggested she should show more cleavage. Claimant knocked his hand away and told him to stop.

On October 7, 2019, claimant sent a complaint regarding Curley's behavior to Corcoran via text message. Following this complaint, the city hired an investigator to examine the allegations. The investigator interviewed claimant and Curley and produced a report for the city council.

Curley subjected claimant to sexual harassment on a daily basis for years, including making sexual comments toward her; requesting she send him explicit photos of herself; and touching her breasts, buttocks, and genital area. This conduct was unwelcome to claimant. Claimant shared this information with the investigator.

The city council reviewed the investigator's report and determined at a special council meeting on November 26, 2019, that Curley had violated the city's policy prohibiting sexual harassment with regard to claimant. The council voted to reprimand Curley but not to discharge him. It instead put in place corrective measures, including requiring all communications between city employees to be via email and requiring Curley to attend sexual harassment/sensitivity training. A review of the corrective measures was to take place in three months. Both employees were to work their normal hours in their normal work areas moving forward. The council also indicated it would install a timecard/timeclock system and surveillance cameras. See Exhibit 1, Council Minutes.

Claimant learned of the council's actions via a phone call from a council member after the meeting and via a copy of the council minutes. After the October 7, 2019 complaint and until her resignation, claimant worked from home. She would go into the office in the evening with her husband to retrieve anything she needed. However, the council's decision would have required her to return to work in her normal hours and location. Claimant worked Monday through Friday from approximately 9 a.m. to 1 p.m. Curley worked Monday through Friday from approximately 7 a.m. to 4 p.m. While it was not necessary for them to be in physical contact to perform the duties of their employment, their work areas were adjacent. Furthermore, it was necessary for them to communicate regularly in order for them to perform the duties of their employment, as they were the only employees of the city. It was also necessary for them both to attend city council meetings.

Claimant chose to resign rather than return to work with Curley as instructed by employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the January 6, 2020 (reference 01) unemployment insurance decision that determined claimant was eligible for benefits is **AFFIRMED**.

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

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).

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.*

The administrative law judge finds the testimony offered by claimant to be more reliable than the testimony offered by Corcoran. Claimant provided consistent, credible, first-hand testimony of Curley's conduct toward her and the reports she made of that conduct to Corcoran and the investigator. In contrast, Corcoran at times had difficulty recalling important information relating to claimant's separation from employment. This included difficulty recalling the conclusions of the investigator and the actions taken by the council. For these reasons, the administrative law judge finds claimant's recollection of the facts and circumstances surrounding her separation from employment to be more reliable than Corcoran's, which is reflected in the findings of fact set forth above.

Claimant has carried her burden of proving her voluntary quitting was for good cause attributable to employer. Claimant was subjected to a pattern of sexual harassment by Curley. But despite finding Curley had violated its policy on sexual harassment, the city instructed claimant to return to work with him. These working conditions were intolerable or detrimental to such an extent as to constitute good cause for quitting attributable to employer.

The administrative law judge notes employer put in place corrective measures meant to limit the contact between claimant and Curley and prevent future sexual harassment. The administrative law judge acknowledges that claimant's showing of good cause for quitting may have been stronger had employer not put the corrective measures in place. The administrative law judge also gave consideration to employer's argument that claimant should be denied benefits because she did not return to work to see if the corrective measures would prevent future harassment.

However, applicable law does not require claimant to give employer an opportunity to correct the intolerable or detrimental conditions leading to the quitting - let alone require her to return to work to see if corrective measures put in place are effective - in order to demonstrate good cause for quitting attributable to employer. The law simply requires that a reasonable person would have found the conditions of employment so intolerable or detrimental as to constitute good cause for quitting.

Even with the corrective measures, claimant would have had to return to working adjacent to and regularly communicating with the coworker who subjected her to a pattern of sexual harassment. The administrative law judges concludes a reasonable person would have found these working conditions to be so intolerable or detrimental as to constitute good cause for quitting attributable to employer.

II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

Because the administrative law judge finds claimant is eligible for benefits, these issues need not be addressed.

DECISION:

The January 6, 2020 (reference 01) unemployment insurance decision that determined claimant was eligible for benefits is AFFIRMED. Claimant is eligible for benefits, provided she meets all other eligibility requirements.



Andrew B. Duffelmeyer
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April 24, 2020
Decision Dated and Mailed

abd/scn