

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GENA M THOMPSON
Claimant

METRO EXPRESS LLC
Employer

APPEAL 22A-UI-03456-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/31/21
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 13, 2022, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary resignation. The parties were properly notified about the hearing. A telephone hearing was held on March 10, 2022. The claimant participated and testified. The employer participated through Owner Keith McKay.

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 part-time as a press from September 2020, until she was separated from employment on September 1, 2021, when she quit. The claimant reported directly to Co-Owner Marcus McKay. The claimant's schedule was initially from 7:00 a.m. until she finished with her job duties, which spanned from 5:00 p.m. to 7:00 p.m.

In June 2021, Marcus McKay spoke with the employer's employees about switching his employees to a schedule beginning at 10:00 p.m. and ending whenever they were finished with work for the night. At the time, the claimant stated that she believed this would give her more time to spend with her son.

The claimant's son has autism. He is required to go to Childserve each day from 5:30 a.m. to 5:00 p.m. The claimant's sister-in-law would watch him at nights after the claimant switched to the night shifts.

On August 20, 2021, the claimant's son tested positive for methamphetamine. The claimant told coworkers she worked with that she would not be coming in because the Department of Human Services were looking for her.

On September 10, 2021, the claimant asked Marcus McKay if she could return to working her regularly occurring overnight shift. Marcus McKay told the claimant that they did not need her services at that time.

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.

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:

- (20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

Iowa Admin. Code r. 871-24.26(1) provides:

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:

- (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. EAB*, 433 N.W.2d 700 (Iowa 1988).

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 his own common sense and experience, the administrative law judge finds the following facts in light of inconsistencies in testimony.

The administrative law judge finds Mr. McKay's testimony that the claimant called and informed Marcus McKay her son had ingested methamphetamine as a reason she could no longer work during the days on August 20, 2021. While both parties had credibility problems, the administrative law judge finds the employer more credible on this point because the claimant disconnected the call just after this allegation had been made. She subsequently acknowledged she had a phone conversation with the employer's employees regarding these circumstances.

The administrative law judge finds Mr. McKay's testimony stating the claimant initially had no issue with working the night shift as credible. The administrative law judge makes this finding springing from the previous finding that what spurred the claimant's opposition to the dayshift was the prospect that Department of Human Services employees may more easily locate her regarding the allegations about her son.

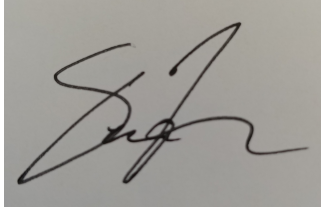
The administrative law judge finds the claimant did not inform Marcus McKay she quit. The administrative law judge does not find the employer's testimony regarding this allegation credible because Marcus McKay was not made available to testify. Furthermore, the employer could not even give an approximate description of what the claimant said. The claimant appeared to concede she quit at times, but the administrative law judge believes this was due to her inability to fully capture the circumstances of her separation without mentioning the DHS issue.

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).

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 January 13, 2022, (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.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'Sean M. Nelson'.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
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April 12, 2022
Decision Dated and Mailed

smn/kmj