

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

STEPHANIE L FLORYANCIC
Claimant

APPEAL 17A-UI-08147-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRECISION RESISTIVE PRODUCTS INC
Employer

**OC: 07/23/17
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 9, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 29, 2017. The claimant participated personally. The employer participated through Jeff Sparrow, production manager. Claimant Exhibits A and B were received into evidence.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit the employment with 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 production operator and was separated from employment on August 9, 2017, when she quit the employment without notice. Continuing work was available.

The claimant began work in Spring 2016 for this employer. In February 2017, Mike Bush, became the claimant's immediate supervisor. The claimant began witnessing repeated comments by Mr. Bush, which made her uncomfortable. Specifically, the claimant cited to Mr. Bush often making sexual innuendos such as her referring to something as hard, and he responding, "I'll show you hard". He also made repeated comments about the size of his penis to her, most recently one week before employment. In addition, Mr. Bush would often call the claimant into his office for unnecessary meetings in which he would comment or gossip about other employees' work performance, and his plans to supervise like an Army, by breaking people down to rebuild. Due to Mr. Bush's conduct, the claimant began dreading coming to

work, and on June 7, 2017, that she had “enough” of Mr. Bush’s conduct as well as other bullying by her co-worker, Pam Crawford, who had twice attempted to swerve and hit her with her car while in the parking lot.

The claimant had made reports to owner, Myron Spears, about the second incident with Ms. Crawford and Mr. Bush, but no action had been taken. The claimant stated other employees attempted to make a complaint with the employer about the parking lot incident but were denied. The claimant had also voiced concerns of disparate treatment amongst tenured employees versus newer ones such as herself, without any response from the employer. She discontinued making efforts to contact the employer due to the non-response. The claimant also stated there were no female members of management for her to report the comments of Mr. Bush.

The claimant was aware of the employer’s policies which stated after three consecutive no call/no shows, she would have to quit by way of job abandonment. The claimant acknowledged she did not inform the employer of her intent to quit but simply discontinued reporting for work.

REASONINGS AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant’s separation from the employment was with good cause attributable to the employer.

Iowa Code § 96.5-1 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(4) 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:

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

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. See 871 IAC 24.25. “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. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973). Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O’Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

A notice of an intent to quit had been required by *Cobb v. Emp’t Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp’t Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp’t Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was

amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to rule 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 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.* After assessing the credibility of the claimant who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the weight of the evidence in the record establishes claimant has met her burden of proof to establish she quit for good cause reasons within Iowa law.

An employee has the right to work in an environment free from unwanted bullying, or vulgar, sexual innuendo and comments. In this case, the claimant was twice almost hit by a car after her co-worker swerved to hit her in a parking lot. When the claimant reported the conduct, no action was taken. The conduct the claimant was subjected to was severe and recurring. An employee also has the right to expect that management, when notified about such conduct, will take reasonable steps to end the harassment, regardless of whether the report is made in writing or verbally. The claimant was understandably frustrated and discouraged when even her co-workers tried to report the co-worker attempting to hit her but were not allowed to file a complaint. Under the facts of this case, a reasonable person would conclude that the working conditions the claimant was subjected to were intolerable and were not effectively remedied at the point the claimant resigned. The conduct of the claimant's manager, Mike Bush, and peer, Pam Crawford, created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The August 9, 2017, (reference 01) decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible and the benefits withheld shall be paid.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn