

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

CAMEO F JENSEN
Claimant

PHILIP L GARLAND LAWYER
Employer

APPEAL 23A-UI-00282-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/04/22
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quit from Employment
Iowa Code § 96.5(2)a – Discharge from Employment

STATEMENT OF THE CASE:

On January 11, 2023, employer Philip L. Garland Lawyer filed an appeal from the January 3, 2023 (reference 01) unemployment insurance decision that allowed claimant Cameo F. Jensen benefits based on a determination that claimant was discharged on December 2, 2022, and the employer failed to establish she was discharged for willful or deliberate misconduct. The parties were properly notified of the hearing. A telephonic hearing was held at 8:00 a.m. on Monday, January 30, 2023. The claimant, Cameo F. Jensen, participated personally along with witness Michael Bohnsengel. The employer, Philip L. Garland, participated through witnesses Penny Weaver, Bookkeeper; and Carrie Rodriguez, Attorney; and witness/representative Philip L. Garland, Attorney. Employer's Exhibits 1, 2, 3, and 4 were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

ISSUES:

Did the claimant quit the employment without good cause attributable to the employer or was she discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for attorney Philip L. Garland on August 20, 2020. She was employed full-time as a secretary in the law office, performing work for him and attorney Carrie Rodriguez. Claimant's employment ended on December 2, 2022, when she quit due to a hostile and detrimental work environment.

On December 1, claimant had been performing work for Garland related to a division of farmland and a corresponding accounting for a particular client. At some point during the workday, either claimant or Garland had misplaced the documentation. When Garland came into work on December 2 and could not find the documentation, he became upset. This documentation was complex, and it would be time-consuming and costly to re-create. When

claimant came in to work, she tried to help look for the documentation, but neither of them could find it. As Garland continued looking for it, he became “excited” and “a little bit heated,” (Garland testimony) swearing and talking in an agitated manner while he searched. Eventually, Garland headed to his office, and claimant went to the office she shared with Weaver.

A little while later, claimant into Garland’s office to speak with him about the way that he had talked to her. She told him that she did not want him to yell at her for any more of his mistakes. Garland replied that this was actually her mistake. Claimant responded in a raised voice, “I’m done,” to which Garland replied, “Fine.” (Garland testimony) Claimant then walked out of Garland’s office. As claimant was leaving, Rodriguez told her, “Don’t quit.” She replied, “I’m pretty sure I just got fired.” (Rodriguez testimony)

Claimant spoke to Rodriguez twice over the weekend regarding her employment status. Rodriguez called claimant Saturday morning to check in on her. Claimant was hoping to find a way to reconcile with the employer and return to work. However, she did not want to return to the work environment without changes occurring. Ultimately, claimant did not return to the employer.

Claimant had approached Rodriguez previously to report that the way Garland acted in the office made her uncomfortable. Claimant complained about the way Garland “gets excited,” according to Rodriguez. She complained that she feels intimidated when Garland yells and swears in the office. Rodriguez responded to the complaint by consoling her and “smoothing it over.” (Rodriguez testimony) She did not address the complaint with Garland until claimant quit her employment.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$3,671.00, since filing a claim with an effective date of December 4, 2022, and a reopening date of December 18, 2022, for the seven weeks ending January 28, 2023. The administrative record also establishes that the employer did participate in the fact-finding interview. Garland personally participated in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, I conclude claimant quit her employment with good cause attributable to the employer. Benefits are allowed.

Initially, I must determine whether claimant was discharged or whether she quit. Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

It is the duty of the administrative law judge, as the trier of fact, 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 evidence you believe; 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 findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find Garland's testimony credible that claimant quit her employment. I believe that claimant may have not intended to quit on December 2, 2022, when she walked into Garland's office to address the way he made her feel, but I believe that she did in fact quit. This is bolstered by the conversations claimant had with Rodriguez over the weekend, during which she tried to negotiate a return to work that included changes to her work environment to make it more tolerable and pleasant.

Now that I have determined claimant quit her employment, I must examine whether the reason she quit was a good-cause reason fairly attributable to her employment. 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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). In Iowa, an employee is not required to give an employer notice that they intend to quit

an intolerable or detrimental work environment prior to quitting. required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

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). The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

Claimant, Weaver, Rodriguez, and even Garland himself all described Garland's conduct including swearing, a raised voice, and animated, ratcheted-up gestures and motions triggered by his frustration and his temper. This conduct made claimant feel reasonably unsettled and intimidated in her work environment. While frustration at work is surely inevitable in any field, an employer's behavior should never make their employees feel uncomfortable, intimidated, or otherwise unsafe at work. When claimant brought her concerns to Rodriguez, she was not taken seriously. Rodriguez did not handle the concerns appropriately by conducting an investigation, speaking with Garland, and addressing the inappropriate behavior. Instead, she tried to simply quell claimant's concerns without ever actually dealing with the problem facing the workplace.

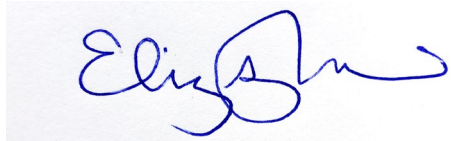
The evidence in the record shows that claimant quit her employment after being subjected to yelling and swearing by her employer. She had previously complained about this issue in hopes of resolving the matter and remaining in her job, but her complaint was never appropriately addressed in a way that remedied the issue. The detrimental work environment persisted until her final day of work. I find claimant quit her employment with good cause attributable to the employer. Benefits are allowed.

As benefits are allowed based on this separation, the issues of overpayment and chargeability are moot.

DECISION:

The January 3, 2023 (reference 01) unemployment insurance decision is affirmed. Claimant was not discharge; she quit the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

The issues of overpayment and chargeability are moot.



Elizabeth A. Johnson
Administrative Law Judge

February 10, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.