

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

ANNIE M WALLERT
Claimant

APPEAL NO. 22A-UI-16210-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ZOOM REAL ESTATE LLC
Employer

**OC: 07/10/22
Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On August 15, 2022, Annie Wallert (claimant) filed a timely appeal from the August 12, 2022 (reference 01) decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on June 17, 2022 without good cause attributable to the employer. After due notice was issued, a hearing was held on September 14, 2022. Claimant participated. Cheryl Holmes represented the employer. Exhibit A, the appeal letter, and Exhibit B, the Employee Counseling Notice and attached statement, were received into evidence.

ISSUE:

Whether the claimant 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:

Annie Wallert (claimant) was employed by Zoom Real Estate, L.L.C., doing business as Circle K, as a part-time convenience store cashier from February 2022 until June 20, 2022, when she voluntarily quit the employment in immediate response to being reprimanded that same day. Chrissy Anderson, Store Manager, was the claimant's immediate supervisor. Cheryl Holmes, was and is District Supervisor.

On June 17, 2022, the claimant got into a heated exchange with Ms. Anderson's significant other, Nicky. The heated exchange occurred in the workplace in the presence of customers. Nicky was at the workplace to pick up Ms. Anderson at the end of Ms. Anderson's shift. Nicky did not work for the employer. Before Ms. Anderson could leave, the employer's protocol required that Ms. Wallert count the money in the cash drawer. While the claimant was counting the cash drawer, Nicky spoke out of turn regarding an earlier conversation the claimant had with Ms. Anderson regarding a temporary reduction in the claimant's work hours. The temporary reduction was attributable to the claimant requesting time off from work. The claimant took offense to Nicky's comment. The claimant also took offense to Nicky standing in the general vicinity of the cash register while the claimant counted the register drawer. The claimant and

Nicky exchanged verbal barbs. Eventually Ms. Anderson stepped in between the two to prevent the matter from further escalating. Ms. Anderson and Nicky subsequently left and the claimant continued to perform her shift duties. The claimant attempted to call Ms. Holmes regarding the heated exchange, but was unable to reach Ms. Holmes. Ms. Anderson also called Ms. Holmes and provided her version of what had transpired between the claimant and Nicky. The claimant asserts there were prior unpleasant interactions with Nicky, but is unable to speak to the specifics of the alleged earlier interactions.

June 17, 2022 was the employer's scheduled payday. Toward the end of the claimant's shift, Ms. Holmes arrived at the workplace to deliver paychecks. Ms. Anderson also returned to the workplace to collect her paycheck and to distribute paychecks to her subordinates pursuant to the employer's protocol. Nicky accompanied Ms. Anderson, but waited in her vehicle. Ms. Holmes hand-delivered the claimant's paycheck to her in consideration of the heated incident from earlier in the shift. While Ms. Holmes was at the workplace, the claimant raised her voice and used profanity. The claimant left the workplace at the end of her shift.

The claimant was next scheduled to work on June 20, 2022. On that day, the claimant reported to the workplace in her uniform. Prior to the claimant's June 20, 2022 shift, Ms. Holmes reviewed surveillance video regarding the incident between the claimant and Nicky. From Ms. Holmes' review of the video, she concluded the claimant had initiated the heated exchange with Nicky and that the claimant had shared in escalating the heated exchange. Ms. Holmes attempted to preserve the surveillance record on a thumb drive device, but was unable to master the task. Prior to the claimant's arrival at the workplace on June 20, 2022, Ms. Holmes and Ms. Anderson drafted written warnings pertaining to the events of June 17, 2022. When the claimant arrived on June 20, Ms. Holmes summoned the claimant to the back room and invited the claimant to share her version of the incident between the claimant and Nicky on June 17, 2022. Ms. Holmes noted that the claimant's version of events, in which the claimant presented Nicky as the instigator and aggressor, did not match what had been depicted on the video surveillance record. The surveillance record reflected the claimant repeatedly turning to yell at Nicky while the claimant counted the cash drawer and depicted the claimant yelling at Nicky when Nicky was across the room. When Ms. Holmes presented the written reprimands to the claimant, the claimant declined to sign them. The claimant uttered profanity and said she was "done." When Ms. Holmes asked whether the claimant was quitting, the claimant confirmed she was quitting. The claimant removed her work uniform shirt and left the workplace.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 871-24.26(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). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

Quits due to unsafe working conditions are also deemed to be with good cause attributable to the employer. See Iowa Admin. Code r. 871-24.26(2).

On the other hand, when an employee voluntarily quits in response to being reprimanded, the quit is presumed to be without good cause attributable to the employer. Iowa Admin. Code rule 871-24.25(28).

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 Ct. 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 weight of the evidence establishes a voluntary quit without good cause attributable to the employer. The claimant's quit was in immediate response to a reprimand. The weight of the evidence does not establish intolerable or detrimental working conditions that would have prompted a reasonable person to leave the employment. Nor does the evidence establish unsafe working conditions. Where the claimant's testimony deviated from the testimony of Ms. Holmes, the testimony provided by Ms. Holmes was more credible. The weight of the evidence indicates the claimant reported for work on June 20 ready to work. This is noteworthy for a couple reasons. It indicates the claimant did not make her decision to quit the employment until after the reprimands were presented. It indicates the claimant did not feel it was unsafe to return to work. The claimant acted inappropriately on June 17, 2022. The claimant significantly contributed to the heated exchange that took place that day with Nicky. In addition, the claimant directed inappropriate language toward Ms. Holmes. Because the quit was without good cause attributable to the employer, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The August 12, 2022 (reference 01) decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.



James E. Timberland
Administrative Law Judge

October 6, 2022
Decision Dated and Mailed

r/s

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>.

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 adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.