

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LASONIA R JOHNSON
Claimant

5TH JUDICIAL DISTRICT
Employer

APPEAL 20A-UI-15869-AW-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/06/20
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting
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:

Employer filed an appeal from the November 20, 2020 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 18, 2021, at 2:00 p.m. Claimant participated. Employer participated through Barbara Buss, Hearing Representative. Karen Chapman, Personnel Specialist, and Art Rabon, Assistant Director, were witnesses for employer. Claimant's Exhibits A – G were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a voluntary quit without good cause attributable to employer.
Whether claimant was overpaid benefits.
Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time Food Service Coordinator from November 15, 2019 until her employment with Fifth Judicial District ended on September 5, 2020. Claimant worked Sunday from 10:00 a.m. until 6:00 p.m. and Monday through Thursday from 4:00 a.m. until 12:00 p.m. Claimant's direct supervisor was Art Rabon, Assistant Director. Sherrie Gordon, Food Service Leader, was not claimant's supervisor but had authority to direct claimant's work.

On multiple occasions, Gordon called claimant names like "stupid" and "stupid bitch," slammed doors and "put her hands in [claimant's] face." Claimant brought these issues to employer's attention. On September 5, 2020, claimant provided employer with a written statement, which is admitted as Exhibit A, and turned in her equipment. Claimant did not return to work. Employer had continuing work available for claimant. Claimant's job was not in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit with good cause attributable to employer. Benefits are allowed, provided claimant is otherwise eligible.

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

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).

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).

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.

Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, 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 concluded that, because the intent-to-quit requirement was added to 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. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)("The good cause attributable to the employer need not be based upon a fault or wrong of

such employer.”). Good cause may be attributable to “the employment itself” rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956). Therefore, claimant was not required to give the employer any notice with regard to the intolerable or detrimental working conditions prior to her quitting. However, claimant must prove that her working conditions were intolerable, detrimental, or unsafe.

It is reasonable to the average person that an employee should not have to work in an environment where she is called names and feels threatened. Claimant has proven that her working conditions were intolerable and detrimental. Thus, the separation was with good cause attributable to the employer. Accordingly, benefits are allowed, provided claimant is otherwise eligible.

Because claimant’s separation was not disqualifying, the issues of overpayment, repayment and chargeability are moot.

DECISION:

The November 20, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit with good cause attributable to employer. Benefits are allowed provided claimant is otherwise eligible. The issues of overpayment, repayment and chargeability are moot.



Adrienne C. Williamson
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March 10, 2021
Decision Dated and Mailed

acw/scn