IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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THE UNIVERSITY OF IOWA
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Appeal Number: 06A-UI-07820-SWT
OC: 06/04/06 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 20, 2006, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on August 21, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Dave Bergeon participated in the hearing on behalf of the employer with a witness, Samatha Franck-Rezac. Exhibit A was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a chemist I from October 25, 2004, to May 17, 2006. The claimant's supervisor was Samatha Franck-Rezac.

The claimant became dissatisfied with conditions at work and believed his performance was being scrutinized more closely than other employees performing the same type of work. This caused the claimant stress and led him to see a social worker in November 2005 because he was having trouble sleeping and had lost his appetite. The social worker considered the claimant to be depressed and suffering from an adjustment disorder. When the claimant informed the social worker about the stress he felt at work, she advised him that he should explore other options.

The claimant continued to work after talking to the social worker. He continued to feel he was treated more harshly when he made a mistake and was unnecessarily required to undergo testing regarding his job duties. He became very upset in late February 2006 because he saw the trainer who was supposed to be testing him show the test to one of another chemists. He mistakenly believed that she had told the chemist that he was being tested, which he considered a confidential matter. In fact, the trainer had not told the chemist he was being given the test. He complained to Franck-Rezaca about this and was not satisfied when she explained that the trainer had not done anything wrong. On March 6, 2006, the claimant submitted his resignation to be effective June 2, 2006, but did not state why he was resigning or indicate he was suffering any health problems related to his work. The claimant worked until May 17, 2006. He notified the employer that he was ill and unable to work on May 18, and then did not return to work or notify the employer regarding subsequent absences.

There is no evidence that conditions at work made it impossible for the claimant to continue in employment because of a serious danger to his health. Any corrective action taken by his supervisors was to improve the claimant's work performance.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment 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.

The unemployment insurance rules provide that a claimant is qualified to receive benefits if compelled to leave employment due to a medical condition attributable to the employment. The rules require a claimant: (1) to present competent evidence that conditions at work caused or aggravated the medical condition and made it impossible for the claimant to continue in employment due to a serious health danger and (2) to inform the employer before quitting of the work-related medical condition and that he intends to quit unless the problem is corrected or condition is reasonably accommodated. 871 IAC 24.26(6)b. The claimant has not satisfied the conditions for receiving benefits under this rule because the evidence does not show conditions at work created a serious health danger for the employer or he informed the employer that he would quit if problems were not corrected or his condition accommodated.

The rules also state that a claimant who leaves employment due to intolerable working conditions leaves employment with good cause attributable to the employer. 871 IAC 24.26(4).

Prior to the recent Supreme Court decision in Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005), this case would have been governed my understanding of the precedent established by the Iowa Supreme Court in Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993), which established two conditions that must be met to prove a quit was with good cause when an employee quits due to intolerable working conditions. First, the employee must notify the employer of the unacceptable condition. Second, the employee must notify the employer that he intends to quit if the condition is not corrected. If this reasoning were applied in this case, the claimant would be ineligible because he failed to notify the employer of his intent to quit if the working conditions were not corrected.

In Hy-Vee Inc., however, the Iowa Supreme Court ruled that the conditions established in Cobb do not apply when a claimant quits due to intolerable or detrimental working conditions by reasoning that the Cobb case involved "a work-related *health* quit." Hy-Vee Inc., 710 N.W.2d at 5. This is despite the Cobb court's own characterization of the legal issue in Cobb. "At issue in the present case are Iowa Administrative Code Sections 345-4.26(1) (change in contract for hire) and (4) (where claimant left due to intolerable or detrimental working conditions)." Cobb, 506 N.W.2d at 448.

In any event, the court in Hy-Vee Inc. expressly ruled, "notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions." Hy-Vee Inc., 710 N.W.2d at 5. The court also overruled the holding of Swanson v. Employment Appeal Board, 554 N.W.2d 294, 297 (Iowa Ct. App. 1996), that a claimant who quits due to unsafe working conditions must provide notice of intent to quit. Hy-Vee Inc., 710 N.W.2d at 6.

The court in Hy-Vee Inc. states *what is not required* when a claimant leaves work due to intolerable working conditions but provides no guidance as to *what is required*. The issue then is whether claimants when faced with working conditions that they consider intolerable are required to say or do anything before it can be said that they voluntarily quit employment with "good cause attributable to the employer," which is the statutory standard. Logically, a claimant should be required to take the reasonable step of notifying management about the unacceptable condition. The employer's failure to take effective action to remedy the situation then makes the good cause for quitting "attributable to the employer." In addition, the claimant should be given the ability to show that management was independently aware of a condition that is objectively intolerable to establish good cause attributable to the employer for quitting.

Applying these standards, the claimant has failed to demonstrate good cause attributable to the employer for leaving employment. First, the evidence does not establish that claimant was singled out for harsh treatment by his supervisors or was otherwise subjected to intolerable working conditions. Second, the claimant did not take reasonable steps to inform the employer about the conditions at work that he considered intolerable. Good cause for quitting has not been shown in this case.

DECISION:

The unemployment insurance decision dated July 20, 2006, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

saw/pjs