

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROSEMARY ANDINO
Claimant

SCHENKER INC
Employer

APPEAL 21A-UI-14747-ML-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/04/21
Claimant: Appellant (1)**

Iowa Code section 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On June 21, 2021, Rosemary Andino (claimant/appellant) filed an appeal from the June 18, 2021 (reference 02) unemployment insurance decision that denied benefits.

A telephone hearing was held on August 25, 2021. The parties were properly notified of the hearing. Claimant participated personally. Employer was unavailable at the number provided. As such, the employer did not participate.

The administrative law judge took official notice of the administrative record.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant's first day of employment occurred sometime in June, 2020. Claimant worked full-time as a team lead from August, 2020 through December, 2020. Claimant worked full-time as a forklift operator from January, 2021, until February 28, 2021. Claimant put in her two-week notice on or about January 14, 2021. Steve Millinen was claimant's immediate supervisor.

Claimant explained her reasons for her quit during the August 25, 2021, hearing. She first stated that she was treated differently by the employer because of her race. To clarify, Claimant did not allege that her co-workers made racist remarks or comments to her. Rather, claimant believed several employment decisions were based on her race. It appears a number of claimant's complaints relate to her co-workers not respecting her authority as a team lead, and management seemingly undermining her efforts to follow the rules. For instance, Claimant reported to management that several employees were using illegal drugs at work to get high; however, nothing was ever done about the same.

Initially, it appeared Claimant's complaints were centered around her co-team lead "Tom." According to Claimant, Tom would let employees get away with several rule violations. This made it hard for Claimant and Tom to work together as a team. Claimant testified that Tom was letting other employees get away with being late to work and using their personal cell phones during the workday. When Claimant would tell employees they could not be on their phones, the employees would say, "Well Tom lets us be on our phones."

According to Claimant, the final incident that prompted her to resign involved Tom undermining her attempts to follow the rules. Claimant described an incident where an employee named "Mark" was attempting to teach another co-worker how to drive a forklift. Claimant told the employee he could not be operating the forklift unless a team lead had instructed him to do so. Claimant told Mark she did not need him on a forklift at the time because there were two team leads working that day, and presumably it was their responsibility to be handling the forklift duties. Claimant told Tom about her discussions with Mark. According to Claimant, Tom then went behind her back and sought approval from Mr. Millinen for Mark to operate the forklift. Mr. Millinen granted Tom's request and Mark was allowed back on the forklift as long as Tom was there to supervise him. Claimant perceived this incident as a sign of disrespect.

Claimant testified she did not discuss her concerns that she was being treated differently with the employer.

Claimant next testified that she was demoted, without explanation, in January, 2021. Claimant believes her ethnicity played a role in her demotion. On January 20, 2021, Courtney Kay, and HR representative, and Mr. Millinen, conducted a meeting with Claimant. During the meeting, Ms. Kay stated, "I hear you want to go back to being a truck driver?" According to Claimant, she did not want to transition into a full-time forklift operator; rather, she was simply expressing her desire to return to a format where the two co-leads rotated job duties between being a team lead and being a forklift operator. From January 20, 2021, forward, claimant only worked as a forklift operator. Claimant's rate of pay was decreased as a result of her change in positions.

Claimant subsequently requested to meet with Shannon, the general manager, about her apparent demotion. Shannon agreed to speak with Claimant; however, he never approached Claimant or scheduled a meeting with Claimant regarding the same. Claimant asserts Shannon avoided her when he was in the building. Claimant testified she did not ask anyone with the employer about her decrease in pay.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.

Claimant determined she could no longer work for the employer. Claimant had an intention to quit and carried out that intention by tendering her resignation and leaving. As such, 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).

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.

As such, if claimant establishes that she left due to intolerable or detrimental working conditions, benefits would be allowed. 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 Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Bd.*, 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 or detrimental.

While a claimant does not have to specifically indicate or announce an intention to quit if her concerns are not addressed by the employer, for a quit to be "attributable to the employer," a claimant faced with working conditions that she considers intolerable, unlawful or unsafe must normally take the reasonable step of notifying the employer about the unacceptable condition in order to give the employer reasonable opportunity to address the concerns. *Hy-Vee Inc. v. Employment Appeal Board*, 710 N.W.2d 1 (Iowa 2005); *Swanson v. Employment Appeal Board*, 554 N.W.2d 294 (Iowa 1996); *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). If the employer subsequently fails to take effective action to address or resolve the problem it then has made the cause for quitting "attributable to the employer."

In this case, Ms. Andino has not demonstrated that she notified the employer about the unacceptable conditions. The evidence as a whole, does not demonstrate that Ms. Andino ever gave the employer clear notice that the conditions in the office were intolerable.

Aside from the allegations of illegal drug use, the work environment described during the hearing does not sound out of the ordinary from what an employee could expect in the employer's industry.

It is not out of the ordinary for supervisors to disagree with or override their employees. It is not out of the ordinary for employers to grant their managers/supervisors some level of discretion when enforcing a disciplinary policy. The behavior that claimant described would not cause the average person to leave employment and does not rise to the level of intolerable or detrimental working conditions.

An important distinction needs to be made between the work environment described, and the allegations that race played a role in the employer's decision making. Racism, or discrimination of any kind, is wholly unacceptable in the workplace. Although the administrative law judge believes the claimant sincerely felt that she was being discriminated against because of her ethnicity, the evidence does not show that Claimant's race factored into the employer's decision making. Rather, it appears as though Claimant's managerial and leadership styles conflicted with those of her co-team lead and her supervisor. Claimant was very by the book, while her co-team lead and supervisor were more lenient in their managerial styles.

There was no evidence presented that Claimant's co-team lead received preferential treatment, or that her statements/decisions were disregarded based upon her ethnicity. Claimant did not sufficiently elaborate on her allegations that the employer treated her differently because of her ethnicity. Claimant's allegations are purely speculative.

Iowa Admin. Code r. 871-24.25(6), (21) provide:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(6) The claimant left as a result of an inability to work with other employees.

(21) The claimant left because of dissatisfaction with the work environment.

Ms. Andino offered and the employer accepted her resignation effective February 28, 2021. While Ms. Andino's leaving may have been based upon good personal reasons, it was not for a good cause reason attributable to the employer. While the administrative law judge is sympathetic to the claimant's situation and the fact she was dissatisfied with the work environment, the claimant has not established that her leaving was for unlawful, intolerable, or detrimental working conditions as required by Iowa law. Therefore, benefits must be denied.

DECISION:

The June 18, 2021 (reference 02) unemployment insurance decision that denied benefits based on a finding that claimant voluntarily quit work for personal reasons is affirmed. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Michael J. Lunn
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September 17, 2021
Decision Dated and Mailed

mjl/ol