IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 - EI

JENNIFER R CORBIN
Claimant

DOHRN TRANSFER COMPANY
Employer

APPEAL NO. 12A-UI-12184-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/09/12
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 1, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on November 5, 2012. Claimant participated with friend and former employee Dave Hatten, friend and former employee Michelle Schneider, and former employee James Greiner. Employer participated through human resources director Sally Jackson and director of transportation Jay Mannion.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a dispatcher from October 2011 and was separated from employment on September 12, 2012. She quit after lead man Bill Tordoff said, "A woman needs to know her role and shut her hole," and noted he does not have a girlfriend because he would rather pay a prostitute $500.00. Drivers and coworker Mindy Rogers were in the office at the time. Claimant asked him to please not talk like that. He just rolled his eyes. No one else said anything. Sioux City terminal and operations manager and immediate supervisor Steve Allen was on vacation that day.

In the past when she had complained to Allen about Tordoff, Allen told her "I hear nothing, I see nothing." Allen was the final authority in the chain of command at that location. Allen had temper issues, punched a filing cabinet next to her desk, and punched holes in trailer walls. He threatened to throw people who cross him, including Mannion, through the window. Allen pulled her out on the dock to yell at her about issues and told her to fix things, even if they did not pertain to her. She did tell Mannion and Jackson about the file cabinet, wall and yelling concerns with Allen but did not file a formal complaint in early July 2012 because she needed the job and income and Allen told her if she reported him he would have her "ass on a platter." Jackson said she could not investigate or follow up without a formal complaint. In mid-August Mannion said he would look into it. The next day Allen confronted claimant and asked "what the f*** are you doing calling Rock Island? I told you what would happen if you reported me."

Schneider, whose last day of work was July 13, 2012, knew that in late June or early July Allen and Tordoff had taken claimant to the back break room and harassed her about whether or not she was going to stay there and told her she could not go to a doctor appointment or they would consider it an unexcused absence. She observed Allen pull claimant onto the dock to talk to her with no one within hearing distance. Claimant felt unsafe and insecure under those circumstances since there was no visibility. Schneider noted animosity by Tordoff and Allen towards claimant and they treated her differently than Schneider. They ignored her and directed questions to Schneider instead of claimant as main dispatcher. Schneider often heard Tordoff talk about hiring prostitutes.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer.

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.

871 IAC 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 notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added 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 recently concluded that, because the intent-to-quit requirement was added to Iowa Admin. Code r. 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. Emp't Appeal Bd.,* 710 N.W.2d 1 (Iowa 2005).

The U.S. Supreme Court has held that a cause of action for sexual harassment may be predicated on two types of harassment: (1) Harassment that involves the conditioning of concrete employment benefits on sexual favors, and (2) harassment that, while not affecting economic benefits, creates a hostile or offensive working environment. *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 62 (1986).

"The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990).

Inasmuch as an employer can expect professional conduct and language from its employees, claimant is entitled to a working environment without being the target of abusive, obscene, name-calling. An employee should not have to endure bullying or generalized violent conduct in order to retain employment any more than an employer would tolerate it from an employee. Allen, assigned as manager and not a mere supervisor or lead worker, is an agent of the employer and operates from a position of authority over subordinate employees. When an employer assigns a manager authority over subordinate employees it accepts the responsibility of that manager's behavior towards employees. The employer was admittedly aware of Allen's violence around claimant and that she was reluctant to file a formal complaint because of Allen's anticipated retaliation. The employer is responsible for providing a safe work environment for its employees and did not do so for the claimant. Since it failed to protect claimant from Allen, and Allen as Tordoff's manager failed to protect claimant from Tordoff's habitual sexual harassment, claimant was subjected to an intolerable work environment that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The October 1, 2012 (reference 01) decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible and the benefits withheld shall be paid.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/css