

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

SAMUEL L WICKRE

Claimant

and

TURPIN DODGE OF DUBUQUE LLC

Employer

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HEARING NUMBER: 16B-UI-10708

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Samuel L. Wickre, worked for Turpin Dodge of Dubuque, LLC, from May 1, 2015 through April 18, 2016 as a full-time sales associate. (19:20-20:24) At the start of his employment, the Claimant sold approximately 19 cars a month until the end of his first year. (24:00-25:00) His performance began decreasing as a result of experiencing daily mental abuse from Mr. Lynch, his immediate supervisor (22:25-25:53), beginning in February of 2016. (28:14-28:43) Lynch made comments like, "Do me a favor...kill yourself, I'll buy the gun." (25:57-26:07) Lynch would also refer to Wickre's daughter as a 'bastard child' and ask, "When you gonna get married, you had her out of wedlock." (26:11-26:16) He would also ask, "How do you like watching your girlfriend [] herself..." because she had a tattoo from another man. (26:17-26:22) Lynch called him a "a piece of sh-t" when the Claimant parked his car in a spot that Lynch believed was his spot. (26:24-26:39) After the Claimant moved his car, Lynch would smile and ask him how his day was going. (26:50-27:05)

On occasion, the Claimant requested time off to attend meetings at the American Legion where he was a member; Lynch required Wickre to personally pay him anywhere from \$20-50 to get time off. (30:24-30:49) This was not the Employer's standard practice for allowing time off. (1:01:33-1:01:48)

The Claimant experienced depression and severe anxiety episodes that resulted from being singled out and 'picked on' daily by Lynch. (21:35-21:49; 28:00-28:10; 29:00-29:11) Mr. Wickre had been diagnosed with severe depression nearly 15 years ago, but was 'cured' back then until his interactions with Lynch, which triggered his episodes, along with panic attacks affecting his job performance.

At the beginning of April of 2016, the Employer, along with Lynch, met with the Claimant to discuss his decrease in sales. The Employer forewarned him that if he didn't increase his sales, he would be out of a job. Wickre also had to complete a monthly goal sheet. (38: 24-38:40) Wickre explained that 'his head wasn't in the game.' (41:38-41:47) The Claimant told Mr. Turpin again on or about April 4th that he was willing to make his situation work. (34:00-34:10)

A couple days later when Mr. Wickre could no longer tolerate Lynch's continued abuse, Wickre complained to Denise Deckert, head of Human Resources, at or around April 8, 2016, who in turn, talked to Pat Turpin about the harassment as well as Lynch's making him pay for time off. (29:22-30:18; 42:12-42:25; 1:01:05-1:01:23) The Claimant did not address his concerns to Turpin, first, because he was afraid he and Lynch would retaliate. (31:29-31:31; 1:12:33-1:12:41) The Employer spoke to the Claimant about the matter and Lynch subsequently approached Mr. Wickre indicating he would stop the joking around and act professionally. (32:14-32:57; 1:02:38-1:02:46)

The Claimant's panic attacks persisted, as Lynch continued to engage in unspoken, intimidating behavior by walking up to the Claimant's office, glaring at him, and then turning around to walk away. (34:15-35:13) A couple days later, Lynch stormed into the Claimant's office and directed Wickre to relocate from his current office to a cubicle. (35:21-35:29) When Wickre asked him why, Lynch retorted, "Because I f-cking said so!" (35:30-35:39)

On April 14th, Lynch again approached Wickre's workspace, glared at him, then walked away. Mr. Wickre immediately had a panic attack, and subsequently went to the Employer to inform him that he had a doctor's appointment (45:57-46:27; 1:03:53-1:03:55) to which he left to seek mental health treatment at Hillcrest Family Services as a result of his stressful work situation. (42:15-42:19; 44:20-44:48) The Claimant was placed on medication and continued therapy. (Exhibit A-B) Although the Employer placed the Claimant on a medical leave of absence (56:21-56:35), Mr. Wickre did not believe he could return to the Employer without Lynch's continued harassment. (58:30-58:34) Another employee experienced similar continued harassment from Lynch, which resulted in that employee quitting when his complaints yielded no change in Lynch's behavior. Wickre's mental health counselor believed he should seek other employment to avoid a relapse. (57:47-58:20) The Claimant submitted his letter of resignation. (20:48-21:03; 43: 41)

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.26(6)"b" provides:

Employment related separation. The claimant was compelled to leave employment because of an illness injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy or disease to the employee which made it impossible for the employee

to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of the employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Claimant's version of events. The Claimant provided numerous examples of his supervisor's behavior, which was tantamount to emotional abuse and bullying in the workplace. Wickre also provided unrefuted testimony that he had good job performance prior to Lynch's onslaught of abuse. The Employer did not refute Lynch's behavior and merely corroborating that such harassment occurred when Turpin indicated he spoke to Lynch and Lynch agreed to 'act professionally and cease his 'joking' behavior to the Claimant. It is clear from Wickre's testimony that Lynch's behavior persisted as he retaliated in covert ways to intimidate Wickre. The Claimant already had a history of depression, which was triggered and further exacerbated with panic attacks that arose from the daily stress he experienced because of Lynch's behavior. His failing job performance is directly attributed to his supervisor's ongoing abuse, even though he tried to the best of his ability to maintain his sales.

Mr. Wickre put the Employer on notice of his deteriorating health condition. And although the Employer asserts that he'd been working on trying to accommodate the Claimant's concerns, there is nothing in the record to substantiate that claim. (1:10:33-1:10:36) The Claimant was totally unaware of any such efforts, and had no reason to believe anything would change given his own experience after initially reporting Lynch's behavior as well as his knowledge of a prior employee's similar plight who ended up quitting. Thus, having no hope that his worksite harassment would stop, he chose to quit, rather than stay on to succumb to Lynch's continued abhorrent behavior. Voluntary quitting within the meaning of section 96.5(1) is attributable to the employer "...[w]hen factors or circumstances directly connected with employment aggravate or cause illness or injury to an employee which makes it impossible for him to continue in the employment..." See, 871 IAC 24.26(6)"b", *supra*. See also, *McComber v. Iowa Employment Sec. Comm'n*, 254 Iowa 957, 962, 119 N.W.2d 792, 795-96 (1963) (claimant worked with woolen materials to which she developed an allergy). See also *Ellis*, 285 N.W.2d at 156 (claimant was allergic to natural Christmas trees, and one was at place of employment); *Rafferty v. Iowa Employment Sec. Comm'n*, 247 Iowa 896, 900, 76 N.W.2d 787, 789 (1956) (claimant contracted jaundice attributed to an on-the-job back injury). When, however, such voluntary quitting is due to an illness or injury having no connection with the employment, the quitting is not attributable to the employer. Iowa Code § 96.5(1); *Moulton v. Iowa Employment Sec. Comm'n*, 239 Iowa 1161, 1165, 34 N.W.2d 211, 213 (1948) (claimant quit because of pregnancy).

Based on this record when viewing it as a whole, the Claimant's quit is directly attributable to the work environment, which aggravated his pre-existing mental health condition. The Claimant provided corroborating documentation to support his claim. For this reason, we conclude that the Claimant satisfied his burden of proof.

DECISION:

The administrative law judge's decision dated October 26, 2016 is **REVERSED**. The Employment Appeal Board concludes that the Claimant voluntarily quit with good cause attributable to the Employer. Accordingly, he is allowed benefits provided he is otherwise eligible.

Ashley R. Koopmans

James M. Strohman

AMG/fnv