

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIELLE R PHILLIPS

Claimant

33 CARPENTERS CONSTRUCTION INC

Employer

APPEAL 18A-UI-07246-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/10/18

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:

The employer filed an appeal from the July 2, 2018, (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant quit due to detrimental conditions. The parties were properly notified of the hearing. A telephone hearing was held on July 25, 2018. The claimant, Danielle R. Phillips, participated. The employer, 33 Carpenters Construction, Inc., participated through Annette Snyder, HR Consultant.

ISSUES:

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

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as an administrative assistant, from November 17, 2017, until June 15, 2018, when she quit. In the morning of June 15, 2018, owner Kim Nelson came to the workplace to speak to claimant. Nelson reprimanded claimant for using YouTube for one hour that morning. Claimant accepted this reprimand and agreed to let the employer dock her one hour of compensation for this. Later that day, a customer came in looking for Nelson. Claimant had seen this customer come in and have social conversations with Nelson on several occasions, and she believed that he was friends with Nelson. The customer asked where Nelson was, and claimant told him that she and her husband had left for vacation. Approximately twenty minutes later, Nelson called claimant and screamed at her. Nelson reprimanded claimant for telling the customer that she was on vacation. She yelled at her, used profanity toward her, and demeaned her and her ability to perform her job. Claimant attempted to apologize and explain that she thought the customer was a friend of Nelson's. Nelson continued to yell at claimant until she hung up on her. At that point, claimant felt she could no

longer work for the employer and she quit. Continued work was available, had claimant not quit her job.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,632.00, since filing a claim with an effective date of June 10, 2018, and an additional date of June 24, 2018, for the four weeks ending July 21, 2018. The administrative record also establishes that the employer did not participate in the fact-finding interview, make a first-hand witness available for rebuttal, or provide written documentation that, without rebuttal, would have resulted in disqualification.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant separated from her employment with good cause attributable to the employer. Benefits are allowed.

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.

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.

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). 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 rule 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 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 a public dressing down with abusive language directed at them, either specifically or generally as part of a group, in order to retain employment any more than an employer would tolerate it from an employee.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds claimant's firsthand testimony credible. In this case, claimant was yelled at, demeaned, and sworn at by one of the business's owners. No employee is required to remain at a job where they are treated with such disregard. The administrative law judge finds that claimant has established she quit with good cause attributable to the employer. Benefits are allowed. As claimant's separation from employment is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The July 2, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant quit the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn