IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MICHAEL A CLAPSADDLE
Claimant

SWIFT & COMPANY
Employer

APPEAL NO. 07A-UI-10560-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/14/07 R: 02
Claimant: Respondent (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 6, 2007, reference 01, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on December 3, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Tony Luse participated in the hearing on behalf of the employer.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer from February 6, 1996, to October 4, 2007. Since August 2005, the claimant was working as the supervisor of the export department, which involved supervising about 21 employees. Sometime in 2007, the claimant was told that in addition to his department, he would be supervising 33 employees in the perimeter department while the department supervisor was off work on medical leave. The claimant agreed to the additional duties and responsibilities because he understood it was only temporary.

Around August 2007, the claimant was informed that the other department supervisor was not returning to work and he was to continue supervising both departments. The claimant complained to his supervisor about the extra work and long hours involved in supervising both departments and asked for help. His supervisor assured the claimant that something would be done but nothing was done to help him. The claimant was experiencing stress and told his supervisor that he was not able to handle all the work. He also had to deal with constant complaints from workers about the poor condition of some of the equipment they were required to use.

On October 4, 2007, three employees left work at the beginning of the shift stating they were sick. When another employee said he was sick and wanted to leave, the claimant took him to the human resources department. He was hoping that the worker would stay after being told that he would receive an attendance point for leaving. Instead, when the claimant asked the

assistant in human resources to talk to the employee, she asked the claimant if he had any handcuffs because it was not a prison and there was no way to make people stay. This comment upset the claimant so he went back to the line. Later, when the employment manager, Tony Luse, called the claimant into his office and asked him what was wrong, he told Luse that he had enough and was done.

The claimant quit employment because (1) he was stressed by the extra work and responsibilities of supervising two departments, (2) he was tired of having to deal with the substandard equipment and employee complaints, and (3) he was upset by the curt comment from the assistant in the human resources department.

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.

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.

Before the 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 in Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The Cobb case established two conditions that must be met to prove a quit was with good cause when an employee quits due to intolerable working conditions or a substantial change in the contract of hire. 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 intolerable working conditions and the substantial change in the employment contract 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. Based on the Hy-Vee Inc. reasoning, notice to quit unless conditions are remedied would also not be required when a claimant quits due to a substantial change in the contract of hire under 871 IAC 24.26(1).

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 or a change in the contract of hire that they consider substantial 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 or change. 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 or was a willful breach of the contract of hire to establish good cause attributable to the employer for quitting.

Applying these standards, the claimant has demonstrated good cause attributable to the employer for leaving employment. The claimant was given extra work and responsibilities to supervise two departments when there previously had been one supervisor for each department. He complained to management about the fact that he was unable to handle both departments and asked for help, but no help was provided. The final straw that occurred when the assistant in the human resources department made a curt comment to him would not have been enough to show intolerable working conditions, but that in addition to the stress caused by the extra duties and responsibilities and lack of help satisfies the law's standard of good cause attributable to the employer.

DECISION:

The unemployment insurance decision dated November 6, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

_____
Steven A. Wise
Administrative Law Judge

_____
Decision Dated and Mailed

saw/pjs