IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

DUSTIN W STUCKER Claimant **J F SEHR INC** Employer	**APPEAL 17A-UI-06559-DL-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 06/04/17** **Claimant: Respondent (5)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the June 23, 2017, (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on July 14, 2017. Claimant participated. Employer participated through company president/owner Jerry Sehr.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time mechanic through June 5, 2017. Claimant worked Saturday on repairs to a truck the employer needed to use on Monday. On Sunday, June 4, Sehr called claimant at home and on speaker phone in front of claimant's spouse and friend, became angry about the repairs required for the truck beyond what was anticipated. He yelled at claimant, "you're fucking worthless to me; you've never done a thing for me." Sehr accused claimant's mother of selling drugs out of the shop when she brought food to him and called claimant's wife "a whore." He did not tell claimant he was fired.

On Monday, June 5, Sehr was driving a truck and claimant reported to work at about 10 a.m. to gather his tools. Sehr returned to the shop about 3 p.m. and became loud and angry. Claimant stopped packing his tools and went to a truck to make it appear he was working. Sehr went to claimant a few inches from his face, screaming and raised his fist above his head as if he were going to hit claimant. Sehr called him "stupid" and "retarded." He "crammed" his fist into the vehicle reservoir and pulled out an air filter saying, "does this look like a new fucking filter to you, idiot?" Mechanic Dave was in the shop but ducked his head and "stayed out of the cross-

hairs." Sehr left the shop for the day. Claimant finished loading his tools and left at about 3:30 p.m.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment with 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.

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. Sehr's loud, aggressive, name-calling directed at claimant created an intolerable work environment that gave rise to a good cause reason for claimant to leave the employment.

DECISION:

The June 23, 2017, (reference 01) unemployment insurance decision is modified without change in effect. Claimant was not discharged but voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs