

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELSEY M KRITZER
Claimant

APPEAL 20A-UI-10501-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEABOARD TRIUMPH FOODS, LLC
Employer

OC: 06/07/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code section 96.3(7) – Overpayment of Benefits
PL116-136, § 2104 – Eligibility for Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On August 31, 2020, Kelsey Kritzer (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated August 20, 2020 (reference 01) that denied benefits based on a finding claimant was discharged from work on May 18, 2020 for excessive unexcused absences.

A telephone hearing was held on November 16, 2020. The parties were properly notified of the hearing. The claimant participated personally. Seaboard Triumph Foods, LLC (employer/respondent) did not register a number for the hearing and did not participate.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant's first day of employment was March 15, 2019. Claimant worked for employer full-time as a reconditioning butcher. The last day claimant worked on the job was May 18, 2020. Claimant's immediate supervisor was Line Supervisor Lucas. Claimant separated from employment on June 5, 2020. Claimant resigned on that date.

Claimant resigned due to an incident involving a supervisor and employer's response to it. On May 17, 2020, a supervisor made repeated unwanted sexual advances toward claimant, including coming to her home and making unwanted physical contact with her. Claimant reported this incident to HR on May 21, 2020. At that time claimant requested time off, as she was very

uncomfortable returning to work after what occurred. Employer granted this request and indicated it would contact claimant about how it would proceed from there.

After not hearing from employer for approximately a week, claimant called back to inquire about what steps had been taken and about a return to work. Claimant again met with HR on June 5, 2020. When claimant went to the workplace for the meeting, she was shocked to see her harasser was still working there. This again made her very uncomfortable. At the meeting, claimant learned that employer had not spoken with her harasser about her complaint. Employer asked claimant how she wished for it to proceed. Claimant requested she be allowed to take additional time off. Employer declined this request, instead indicating only that the harasser “would not be on the premises” on Monday and her employment would be terminated if she did not return at that time.

Claimant was upset and disappointed by employer’s response, particularly that it had not addressed the issue with her harasser; that he was still working there when she went in for the meeting; that it did not contact her to follow up on her complaint as promised; and that it would not allow her further time off. Claimant was skeptical that employer would adequately address the issue with her harasser and feared that she would still have to interact with him at work. For these reasons, she did not return to work, effectively resigning at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated August 20, 2020 (reference 01) that denied benefits based on a finding claimant was discharged from work on May 18, 2020 for excessive unexcused absences is REVERSED. Claimant voluntarily resigned with good cause attributable to employer. Claimant’s separation was not disqualifying and benefits are allowed, provided she is otherwise eligible.

Iowa Code section 96.5(1)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual’s wage credits:

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 provides in relevant part:

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:

(2) The claimant left due to unsafe working conditions.

(3) The claimant left due to unlawful working conditions.

(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). The employer has the burden of proving that a claimant’s departure from employment was voluntary. *Irving v. Emp’t Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). “In general, a voluntary quit means discontinuing the employment because the employee

no longer desires to remain in the relationship of an employee with the employer". Id. (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

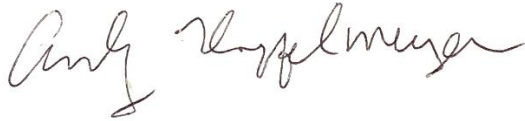
"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Claimant has carried her burden of proving the voluntary leaving was for good cause attributable to employer. Claimant left due to unsafe, unlawful, and intolerable or detrimental working conditions. Claimant resigned due to an incident involving a supervisor and employer's response to it. While employer took some steps to address the conditions, a reasonable person would have found the conditions so intolerable or detrimental as to justify quitting. This is true in large part to employer's delay and lack of follow through in addressing claimant's complaint and its threatening to terminate her if she did not return to work immediately. Given these facts, claimant's skepticism that employer would adequately address the issue with her harasser and her fear that she would still have to interact with him at work were not unreasonable. For these reasons, the separation from employment was not disqualifying and benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The decision dated August 20, 2020 (reference 01) that denied benefits based on a finding claimant was discharged from work on May 18, 2020 for excessive unexcused absences is REVERSED. Claimant voluntarily resigned with good cause attributable to employer. Claimant's separation was not disqualifying and benefits are allowed, provided she is otherwise eligible.



Andrew B. Duffelmeyer
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November 23, 2020
Decision Dated and Mailed

abd/mh