IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

LISA K SMITH
Claimant

US POSTAL SERVICE
Employer

APPEAL NO. 14A-UCFE-00001-L

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/17/13
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 26, 2013, (reference 01) decision that denied benefits because of voluntarily quitting the employment. After due notice was issued, a hearing was held on January 28, 2014, in Waterloo, Iowa. Claimant participated. Employer did not respond to the hearing notice instruction and did not participate. Claimant's Exhibit A was received. The numbered paragraphs refer to numbered multiple-page documents following the four page letter to Hermann, e.g. A-1.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time employee between two positions as officer in charge (OIC) in the Shell Rock, Iowa office and post master relief (PMR) in the Plainfield, Iowa office from July 2012, through November 20, 2013. Claimant tendered her resignation after a series of events outlined later in a letter with attachments to Des Moines manager, Thomas Allen's supervisor Jim Hermann, Hawkeye District Manager (Claimant's Exhibit A) pointing out errors of Allen and her supervisor Doug Suckow of the Waverly office. Hermann did not reply until January 17, 2014, denying her claims about management misconduct and elevated pay rate, and telling her to reapply for work. (Claimant's Exhibit A)

Claimant was given conflicting information about her job titles, job duties and pay. On August 5 she was inducted as OIC that Allen signed off on. Shell Rock post master Kim Harms, who reports to Allen, offered the position to claimant Allen's approval. (Claimant's Exhibit A-6) She did not get the ten percent (per Harms, and five percent according to Suckow and labor relations liaison in human resources Angie Pettinger) pay increase she was promised. She said on October 18 that claimant should have received her pay increase. She attempted to rectify the issue without resolution. (Claimant's Exhibit A-6, 7) Suckow falsely accused her of time abuse (Claimant's Exhibit A-2, 11), inaccurate record-keeping he was at least partially responsible for (Claimant's Exhibit A-9, 10), and untimely transfer of mail. (Claimant's

Exhibit A-9) When she responded to Suckow or challenged his assumptions, he began a course of harassment and bullying by written and verbal abuse in violation of employer policy. (Claimant's Exhibit A-8) She received no satisfaction from her notice of concerns to Allen. (Claimant's Exhibit A-1)

On November 20, she saw a notice distributed about a new PMR job opening posted for the Plainfield office, which indicated to her she was being replaced. (Claimant's Exhibit A-5) Allen and Hermann did not respond to her inquiries so she resigned. No reasons given for the elimination of hours or removal from the other position. The employer had not previously warned claimant her job was in jeopardy for any reason.

She did not see a doctor about her stress and insomnia and had no medical advice to quit. Gradually over three and a half weeks before the separation she got worse treatment from Suckow about issues that were not of her making or responsibility.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant 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.

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.

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).

In the absence of an agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving employment. *Deshler Broom Factory v. Kinney*, 140 Nebraska 889, 2 N.W.2d 332 (1942). In general, a substantial pay reduction or 25 to 35 percent reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988).

Where claimant was required to work in two separate positions and received contradictory instructions from two different supervisors and quit after being reprimanded for his job performance was entitled to benefits. *McCunn v. Emp't Appeal Bd.*, 451 N.W.2d 510 (Iowa Ct. App. 1989).

"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.

The conflicting instructions, false accusation of working unauthorized hours, blame for accounting errors attributable to her supervisor, verbal abuse, removal of claimant from her positions without notice or reason combined with the failure to pay the wage increase as promised, the employer created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment.

Even had claimant not quit, her removal from the two positions without notice or reason would be considered a discharge for no disqualifying reason as the employer has not established job-related misconduct. Under either scenario, benefits are allowed.

DECISION:

The December 26, 2013 (reference 01) decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible and the benefits withheld shall be paid.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs