IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JAYNE E MANLEY
Claimant

R J PERSONNEL INC
TEMP ASSOCIATES
Employer

APPEAL NO.: 06A-UI-10996-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10-15-06 R: 04
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Leaving
871 IAC 24.26(4) – Intolerable Working Conditions

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 14, 2006, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on November 30, 2006. Claimant participated with Rebecca O'Rourke and subpoenaed witnesses Angie Timmerman and Gina Othmer. Employer participated through Mike Thomas and Robert Jensen.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time receptionist from August 2, 1999 until October 16, 2006, when she quit. Jensen raised his voice at claimant on October 16 in the office hallway such that coworkers and clients could hear. He told her to check her clocks at home. Claimant replied that she did not think she was late. He walked her to her desk where the office phone clock indicated 7:58 a.m. He told her, "I expect my employees to be here by 8." Claimant responded, "I'm here at my desk and ready to go." Jensen told her, "You are cutting it too close." Claimant asked him to talk to her in his office rather than in front of others. Then Jensen told her to take a day without pay and claimant said she would not return if she did that.

Angie Timmerman and Gina Othmer heard him talking to claimant in the hallway, and heard the conversation escalate and claimant defend herself. They also heard claimant tell Jensen, "If you want to reprimand me, then I would appreciate it if you would take me into your office and not embarrass me in front of my coworkers." Claimant was scheduled to start work at 8:00 a.m. and was not paid for time she worked before that but was not docked time if she was late. She had not been tardy in two or three years.

REASONING AND CONCLUSIONS OF LAW:

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

Generally notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, 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 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. Employment Appeal Bd.,* 710 N.W.2d 1 (Iowa 2005).

An employee should not have to endure a public dressing down, even if it is not considered discipline, in front of clients or coworkers in order to retain employment any more than an employer would tolerate it from an employee. Since Jensen was the owner, there was no other chain of command to follow for the purposes of *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). Claimant left the employment with good cause attributable to the employer. Benefits are allowed.

DECISION:

The November 14, 2006, reference 01, decision is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw