

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARK A HOWARD
Claimant

FULTON CORPORATION
Employer

APPEAL 14A-UI-11508-LT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/08/13
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 30, 2014 (reference 04) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on November 26, 2014. Claimant participated with his spouse Cindy Howard. Employer responded to the hearing notice instructions but was not available at the number provided when the hearing was called and did not participate.

ISSUE:

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 full time as a temporary line worker from September 22, 2014 and quit the employment at the end of the same day. The intended job duration was for three weeks. He did not return to Fulton Corporation on September 23 because of unsafe working conditions with partially operational machinery in the assembly line work area. He was assigned to hang mail box metal flags on continuously moving hooks for powder coating. There were not enough hooks to hang the flags and then he and a coworker got behind the pace of work. He had to either lean or step over a floor rail into the moving equipment area to reach the hooks. He had no training or orientation and told Deb Green, supervisor of the packing department, the reasons he was leaving; including not having payroll taxes withheld.

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 § 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(2), (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:

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

(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).

The partially functional machinery and unsafe work procedures and area created an unsafe and intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The October 30, 2014 (reference 04) unemployment insurance decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible, and the benefits withheld shall be paid. Since this employment does not fall within the claimant's base period, this employer is not liable for benefits paid during this claim year. The failure to withhold payroll taxes or treat claimant as a covered employee for unemployment insurance purposes has been referred to the IWD attorney.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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