IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JAY S OLSON
Claimant

ALTORFER INC
Employer

APPEAL NO: 18A-UI-09913-JC-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/02/18
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer, Altorfer Inc., filed an appeal from the September 21, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 16, 2018. The claimant participated personally. The employer participated through Julie Wallace, Director of Human Resources. Corey Nuehring, vice president/CFO, also testified. Employer Exhibits 1-9 were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a parts manager and was separated from employment on September 4, 2018, when he voluntarily quit the employment. Continuing work was available.

The claimant began work for this employer in 2009. Approximately one and a half years before separation, D.H. became his manager. D.H. moved from a shop environment to management.

Approximately one year before separation, the claimant went to human resources to complain about D.H.'s conduct in the workplace. The claimant shared with Ms. Wallace that D.H. would come up behind him while he was at the soda machine and then grab and twist his nipple, that he had repeatedly swatted the claimant's rear end, and had made multiple vulgar, sexual

comments. Specifically, the claimant cited to an incident that while being reprimanded by D.H., a female walked by and D.H. said aloud to the claimant that he would "eat corn out of her shit to get to that p---y". Ms. Wallace responded to talking to D.H. Thereafter, the touching discontinued but D.H. continued to make similar comments.

Around March 6, 2018, the claimant met with Mr. Neuhring and raised concerns about D.H. as part of the conversation. He also raised concern about human resources' lack of action against D.H., in light of complaints. During that conversation, Mr. Neuhring stated the claimant would need to decide if he wanted to continue working for the employer.

The final incident leading to the claimant's decision to quit occurred during a meeting approximately one and a half weeks before he tendered his resignation. While discussing how to handle the loss of a shuttle delivery employee, and duration of the route, D.H. stated that it was "not even long enough to a get a piece of ass." The claimant then took a week off of work due to ongoing stress and anxiety. He resigned upon his return. The employer did not dispute the comment made by D.H. was unprofessional but opined it did not constitute a hostile work environment. D.H. remains employed but did not participate in the hearing.

The administrative record reflects that claimant has received unemployment benefits in the amount of $1,004.00, since filing a claim with an effective date of September 2, 2018. The administrative record also establishes that the employer did participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal. Julie Wallace participated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was with good cause attributable to the employer. Benefits are allowed.

Iowa Code section 96.5(1) 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.

The claimant has the burden of proof to establish he quit with good cause attributable to the employer, according to Iowa law. 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. Iowa Admin. Code r. 871-24.25. "Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv*., 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv*., 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id*.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. Iowa Admin. Code r. 871-24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department*

of Job Service, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.,* 494 N.W.2d 660 (1993). While a claimant does not have to specifically indicate or announce an intention to quit if her concerns are not addressed by the employer, for a reason for a quit to be "attributable to the employer," a claimant faced with working conditions that she considers intolerable, unlawful or unsafe must normally take the reasonable step of notifying the employer about the unacceptable condition in order to give the employer reasonable opportunity to address her concerns. *Hy-Vee Inc. v. Employment Appeal Board*, 710 N.W.2d 1 (Iowa 2005); *Swanson v. Employment Appeal Board*, 554 N.W.2d 294 (Iowa 1996); *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). If the employer subsequently fails to take effective action to address or resolve the problem it then has made the cause for quitting "attributable to the employer."

In this case, the claimant credibly testified that he quit the employment after repeatedly raising concerns about the conduct of his immediate supervisor, Dave Hixon. The administrative law judge recognizes that some employers are more lenient in the language it allows in the workplace (regardless of any established policy), but cannot ignore the graphic, blatantly offensive content of D.H.'s comments, as well the fact he was a member of management. Whereas a manager can discipline his/her subordinates for crude and vulgar comments in the workplace, employees rely upon upper management or human resources to address these issues with management.

Prior to quitting, the claimant went to both Ms. Wallace, director of human resources, and Mr. Neuhring, vice president/CFO, with specific complaints about the comments and conduct about D.H. While D.H. discontinued slapping the claimant's rear end or twisting his nipple, the unprofessional and offensive comments continued. The administrative law judge is persuaded the words used or conditions between the claimant and D.H. were escalated to a point that would be deemed harassment or a hostile work environment, and not due to a personality conflict.

An employee has the right to work in an environment free from unwanted vulgar language, lewd physical actions, or blatantly offensive comments. The conduct the claimant was subjected to was severe and recurring. An employee also has the right to expect that management, when notified about such conduct, will take reasonable steps to end the harassment. Under the facts of this case, a reasonable person would conclude that the working conditions the claimant was subjected to were intolerable and were not effectively remedied at the point the claimant resigned. Accordingly, the administrative law judge concludes the claimant has met his burden of proof to establish he voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

DECISION:

The September 21, 2018, (reference 01) decision is affirmed. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

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Jennifer L. Beckman
Administrative Law Judge

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Decision Dated and Mailed

jlb/scn