IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JESSICA J KING
Claimant

CRESCENT ELECTRIC SUPPLY COMPANY
Employer

APPEAL NO. 14A-UI-03582-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/09/14
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 9, 2014, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. Telephone hearings were held on April 24 and 30, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Julie Skinner participated in the hearing on behalf of the employer with a witness, Jen Mond. Exhibit One was admitted into evidence at the hearing based on the stipulation of the parties.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer as an account manager for the employer from April 30, 2011, to February 20, 2014. Under the employer's policy, the employer has zero tolerance for sexual harassment. Jen Mond was the claimant's supervisor.

During the claimant's employment, she had repeated issues with two coworkers. The first was Greg Uhlrich who was also was an account manager. The second was Ben Bergfield, a counter salesperson.

The claimant felt bullied by Uhlrich due to repeated hostile comments he made to her and demeaning conduct exhibited toward her. In August 2012, the claimant began getting text messages from an unknown caller that included threats and comments of a sexual nature. She showed the text messages to Mond and said she thought Uhlrich was behind the messages. The claimant found out that the caller was a friend of Uhlrich. When she asked Uhlrich about the text messages from his friend and whether he had given her number to the friend, he falsely claimed that his friend must have taken his phone and got her phone number from it. Mond later asked the claimant if the texts had stopped and she said they had.

Often when the claimant asked Uhlrich for help, he would react belligerently. Once in September 2012 when the claimant asked for help, he asked her if she wanted a kick in the

teeth. The claimant had also witnessed Uhlrich at one point respond to a female coworker who asked for a ride that he would give her a ride if she gave him "road head" a reference to oral sex. Sometime in 2013, Uhlrich made a comment to the claimant that she was like the end piece on a loaf of bread, everyone touches her but no one wants her, which the claimant found offensive. During a meeting in November 2013, a coworker suggested that a coworker who needed a place to stay for about two weeks could stay with the claimant. Uhlrich sarcastically remarked in front of coworkers that it would be the claimant's longest relationship, which was embarrassing for the claimant. Mond was at the meeting but did not hear the comment when it was made.

In January 2014, the claimant complained to Mond and human resources about the Ulhrich's treatment of her as described in the paragraphs above. Human resources conducted an investigation into Uhlrich's treatment of her. Uhlrich admitted to having made the comment about the longest relationship and this was also confirmed by others attending the meeting. Uhlrich denied making the road head comment. Uhlrich was not asked about the piece of bread comment because it was considered a rude comment not sexual harassment and the claimant could not tell them when it occurred. The claimant had not identified anyone else who heard the piece of bread comment. The employer questioned the person the claimant identified to whom the "road head" comment had been made and she denied the comment had been made.

Around January 15, 2014, the claimant was told that Uhlrich had been warned, and she should let human resources know about any further issues with Uhlrich. Uhlrich received a verbal warning. The claimant felt that after reporting his conduct in January, Uhlrich was angry with her and would often glare at her. She did not report anything until March 6.

In February 2014, the claimant received a text message from Ben Bergfield in which he asked her how it felt going into work every day knowing everyone hated her. She showed this text message to Mond, but did not believe that anything was done to correct the situation.

The claimant, Bergfield, and Uhlrich all attended a National Sales Conference. Shortly before the conference, the claimant was told by Uhlrich's friend who sent the text messages that Uhlrich had given the friend her number and told him to "fuck with" her. During the conference, the claimant heard from other attendees that Uhlrich and Bergfield had been telling people that she was a bitch. She continued to feel like Uhlrich was glaring at her when they encountered each other at the conference.

On February 19 after a trade show at the conference, the claimant was in the bar with other employees. She found out that Bergfield had asked an employee from another branch "what the fuck are you doing" with the claimant.

The claimant then angrily approached Bergfield and told him to stop taking about her. She then noticed Uhlrich was standing nearby. She angrily asked him "Why are you doing this to me? What have I ever done to you." Other employees told the claimant that it was not the place for this, and she responded that she just wanted to talk. When two employees got between the claimant and Uhlrich, the claimant blew up because she believed the employees were supporting Uhlrich and told them all to "Fuck off" and left.

After the claimant returned home, she was hospitalized under a doctor's care due to high blood pressure and anxiety that she attributed to conditions at work from February 21, 2014, to March 5, 2014. While she was in the hospital, a coworker who visited her had told her that she had recently complained about a situation where she had witnessed Uhlrich watching pornography on his cellphone at work. When she questioned him about this, he commented

about needing it to "jack off." The coworker told her that her complaint was not followed up on because she was not sure if the event took place before or after the verbal warning Uhlrich had been given in January. This convinced the claimant that nothing would be done about Uhlrich and she decided to quit.

She obtained a doctor's statement stating that she had been unable to work during the period of time she was off work. The doctor stated that the claimant wanted to quit work due to the work environment, and if what the claimant told the doctor about the work environment was correct, the claimant should not return to that environment.

When the claimant reported to work on March 6, 2014, she was questioned about what had happened on February 19. She complained about how Uhlrich and Bergfield had been treating her and her discovery that Uhlrich was behind the text messages sent by his friend back in 2012. She complained that the employer had not done an adequate investigation or taken effective action in regard to her complaints in January 2014. She submitted her doctor's statement and informed the employer that she was resigning due to mental and emotional distress cause by bullying, harassment, and hostile work environment.

REASONING AND CONCLUSIONS OF LAW:

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

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1.

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.

The unemployment insurance rules provide that a claimant is qualified to receive benefits if compelled to leave employment due to a medical condition attributable to the employment. The rules require a claimant: (1) to present competent evidence that conditions at work caused or aggravated the medical condition and made it impossible for the claimant to continue in employment due to a serious health danger and (2) to inform the employer before quitting of the work-related medical condition and that the claimant intends to quit unless the problem is corrected or condition is reasonably accommodated. 871 IAC 24.26(6)b.

Before the Supreme Court decision in Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005), this case would have been governed by the precedent established in Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The Cobb case established two conditions that must be met to prove a quit was with good cause when an employee quits due to intolerable working conditions or a substantial change in the contract of hire. First, the employee must notify the employer of the unacceptable condition. Second, the employee must notify the employer that she intends to quit if the condition is not corrected. If this reasoning were applied in this case, the claimant would be ineligible because she failed to notify the employer of her intent to quit if the intolerable working conditions were not corrected.

In Hy-Vee Inc., however, the Iowa Supreme Court ruled that the conditions established in Cobb do not apply when a claimant quits due to intolerable or detrimental working conditions by reasoning that the Cobb case involved "a work-related *health* quit." Hy-Vee Inc., 710 N.W.2d at 5. This is despite the Cobb court's own characterization of the legal issue in Cobb. "At issue in the present case are Iowa Administrative Code Sections 345-4.26(1) (change in contract for hire) and (4) (where claimant left due to intolerable or detrimental working conditions)." Cobb, 506 N.W.2d at 448.

In any event, the court in Hy-Vee Inc. expressly ruled, "notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions." Hy-Vee Inc., 710 N.W.2d at 5.

The court in Hy-Vee Inc. states *what is not required* when a claimant leaves work due to intolerable working conditions but provides no guidance as to *what is required*. The issue then is whether claimants when faced with working conditions that they consider intolerable are required to say or do anything before it can be said that they voluntarily quit employment with "good cause attributable to the employer," which is the statutory standard. Logically, a claimant should be required to take the reasonable step of notifying management about the unacceptable condition. The employer's failure to take effective action to remedy the situation then makes the good cause for quitting "attributable to the employer."

Applying these standards, the claimant has not shown good cause attributable to the employer for leaving employment. The employer did take action against Uhlrich based on her complaints and it was within the employer's prerogative as to what action to take. The claimant never mentioned any additional problems until she quit without notice on March 6, 2014. The employer was not given the opportunity to address those concerns before the claimant quit. In terms of quitting for medical reasons, both the Hy-Vee case and 871 IAC 24.26(4) indicate that the claimant had to inform the employer before quitting of the work-related medical condition and that the claimant intends to quit unless the problem is corrected or condition is reasonably accommodated. The claimant did not do so, and therefore is disqualified from receiving benefits.

DECISION:

The unemployment insurance decision dated March 9, 2014, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/css