

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

FRANCISCO COLON
Claimant

APPEAL 16A-UI-13552-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**QUALITY MANUFACTURING
CORPORATION**
Employer

**OC: 11/27/16
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 filed an appeal from the December 12, 2016, (reference 02) unemployment insurance decision that allowed benefits based upon claimant's voluntary resignation for compelling personal reasons. The parties were properly notified of the hearing. A telephone hearing was held on January 9, 2017. The claimant Francisco Colon participated and testified. A Spanish interpreter from CTS Language Link was also present. The employer Quality Manufacturing Corporation participated through Human Resource Manager Nate Cloe and Production Manager Ryan Nelson. Employer's Exhibits 1 through 3 were received into evidence.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to 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: Claimant was employed full time as a laser operator from August 20, 2012, until this employment ended on June 8, 2016, when he voluntarily quit.

On June 6, 2016, claimant gave notice to the employer, both verbally and in writing, that he was resigning. (Exhibit 1). Claimant told the employer he was resigning to accept another position. In actuality, claimant did not have another job, but was resigning due to race-based harassment in the workplace. According to claimant this harassment occurred throughout his employment

and included comments by his coworkers that he should go back to his own country and accusations that he was undocumented. At one point in his employment claimant and several coworkers complained to management about the harassment, but, according to claimant, the harassment continued. Nelson admitted there had been complaints about race-based harassment in the past, but he believed the issue had been resolved. According to the employer no complaints about harassment had been made since 2014 and if claimant was being harassed, he did not properly report it under the employer's harassment policy. (Exhibit 2). Claimant maintained that he reported the conduct to Nelson, but was not sure if Nelson passed his complaints on the human resources. Based on this ongoing harassment, claimant did not report for work again after June 8.

The claimant filed a new claim for unemployment insurance benefits with an effective date of November 27, 2016. To date, the claimant has not received any unemployment insurance benefits. Both the employer and the claimant participated in a fact finding interview regarding the separation on December 9, 2016. The fact finder determined claimant qualified for benefits.

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(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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). Here, claimant provided credible testimony that he was subjected to race-based harassment while at work. Claimant resigned his position because he could no longer take being subjected to this harassment by his coworkers. There is a dispute between claimant and the employer as to whether the claimant gave notice that these issues were ongoing prior to quitting.

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).

While it may have been preferable to the employer that claimant give proper notice of the harassment, such notice was not required to be given prior to the claimant resigning. The ongoing race-based harassment created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed, provided claimant is otherwise eligible. As benefits are allowed, the issues of overpayment and participation are moot.

DECISION:

The December 12, 2016, (reference 02) unemployment insurance decision is affirmed. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible. Benefits withheld based upon this separation shall be paid to claimant. The issues of overpayment and participation are moot.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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