

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELISSA A PORTNER
Claimant

D OF S FOODS INC
Employer

APPEAL 17A-UI-06010-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/21/17
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:

D of S Foods, Inc. (employer) filed an appeal from the June 8, 2017, reference 01, unemployment insurance decision that allowed benefits based upon the determination Melissa A. Portner (claimant) voluntarily quit employed due to detrimental working conditions which is a good cause reason attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on June 28, 2017. The claimant participated. The employer participated through Operations Supervisor/Training Manager Mario Zuniga and Human Resources Director Falon Erbe. No exhibits were offered or received into the record.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?
Can 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 Shift Manager beginning on January 6, 2016, and was separated from employment on May 16, 2017, when she quit.

On the claimant's last day worked, May 11, 2017, she noticed she was scheduled to work on May 15, 2017, a day she had previously requested off. The claimant asked her supervisor Amy Tichy about the schedule. Tichy told her that as she was scheduled, she needed to work. However, Tichy later crossed the claimant's name off the schedule.

On May 15, 2017, the claimant arrived to work for her scheduled shift and noticed that her name was crossed off on the schedule. She mentioned that her name was crossed off to the Assistant Manager who told her to go home. Operations Supervisor/Training Manager Mario Zuniga had just left a meeting which had left him upset when he learned the claimant had

arrived to work and left. He began trying to reach the claimant and Tichy. He was unable to reach either of them and continued to call the store for updates. The claimant eventually called back and Zuniga yelled at and berated her for leaving work that morning. The claimant asked him to stop yelling at her and, eventually, hung up the phone when he did not desist.

The following day, the claimant sent a text message to Zuniga telling him that she was quitting due to his conduct the day before. Both she and Zuniga independently contacted Human Resources Director Falon Erbe. Erbe did not agree with the way Zuniga had handled the situation and offered the claimant a position at another restaurant or to work through the issue with Zuniga. The claimant declined because she did not believe the issues with Zuniga could be fixed and she was unable to work at a different location due to family obligations.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,057.00, since filing a claim with an effective date of May 21, 2017, for the five weeks ending June 24, 2017. The administrative record also establishes that the employer did participate in the fact-finding interview.

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. Benefits are allowed.

Iowa law disqualifies individuals who voluntarily quit employment without good cause attributable to the employer from receiving unemployment insurance benefits. Iowa Code § 96.5(1). An individual who voluntarily quits due to intolerable or detrimental working conditions will be considered to have quit with good cause attributable to the employer. Iowa Admin. Code r. 871-24.26(4). The 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 (Ia. Dist. Ct. App. 1973).

The claimant contends Zuniga yelled at and berated her for not being at work on a day she was removed from the schedule. Zuniga acknowledges he and the claimant had a conversation about the situation, but denies yelling at or berating the claimant. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's version to be more credible. Zuniga admits he was upset leaving a meeting and trying to reach Tichy and the claimant but was unable to do so. He was so upset about the situation that he continued to call the store, even though neither party

was present. It is believable, that by the time the claimant returned Zuniga's phone call, he was upset to the point of yelling.

An employer has a right to expect professional conduct from its employees. However, an employee also has the right to expect a working environment where she will not be yelled at or berated on an approved day off work by a supervisor. An employee should not have to endure bullying or a public dressing down directed at them, either specifically or generally as part of a group, in order to retain employment any more than an employer would tolerate it from an employee. The claimant has met her burden to show she had good cause attributable to the employer for leaving her job.

The employer argued this was a one-time issue and the claimant did not give them a chance to correct the situation. The previously governing case law once required an employee to give notice of an intent to quit to give the employer an opportunity to cure working conditions. See *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). However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement only 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 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). Accordingly, benefits are allowed.

As benefits are allowed, the issue of overpayment is moot and the charges to the employer's account cannot be waived.

DECISION:

The June 8, 2017, reference 01, unemployment insurance decision is affirmed. The claimant voluntarily left employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. As benefits are allowed, the issue of overpayment is moot and the charges to the employer's account cannot be waived.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn