

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DANIELLE J NORELIUS
Claimant

ALMOST FREE LLC
Employer

APPEAL 15A-UI-03693-GT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/01/15
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 16, 2015, (reference 01) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 21, 2015. Claimant participated. Employer participated by David Way, Owner.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on March 3, 2015. Claimant felt harassed and scolded at work. Her employer would make comments about her moods, and her inability to handle stress which made her feel disrespected and not in control at work.

In January of 2015 claimant was notified that her pay would be withheld because of some accounting issues employer was experiencing where employer thought employees were getting paid for hours they had not worked. Claimant requested her check, but was told she would receive it later. The check was for approximately 45 hours of work. Claimant continued working, and was not sure what to do about her lost wages. Finally, on March 3, 2015 after not receiving her wages for the 45 hours she had worked, and with the stress she was under she decided to resign her employment at that time.

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) and (3) provide:

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.

(3) The claimant left due to unlawful 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 871 IAC 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).

In the absence of an agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving employment. *Deshler Broom Factory v. Kinney*, 140 Nebraska 889, 2 N.W.2d 332 (1942).

Iowa Code § 91A.5 provides: Deductions from wages.

1. An employer shall not withhold or divert any portion of an employee's wages unless:

a. The employer is required or permitted to do so by state or federal law or by order of a court of competent jurisdiction; or

b. The employer has **written authorization** from the employee to so deduct **for any lawful purpose** accruing to the benefit of the employee.

2. The following shall not be deducted from an employee's wages:

a. Cash shortage in a common money till, cash box, or register operated by two or more employees or by an employee and an employer. However, the employer and a full-time employee who is the manager of an establishment may agree in writing signed by both parties that the employee will be responsible for a cash shortage that occurs within forty-five days prior to the most recent regular payday. Not more than one such agreement shall be in effect per establishment.

b. Losses due to acceptance by an employee on behalf of the employer of checks which are subsequently dishonored if the employee has been given the discretion to accept or reject such checks and the employee does not abuse the discretion given.

c. Losses due to breakage, damage to property, default of customer credit, or nonpayment for goods or services rendered so long as such losses are not attributable to the employee's willful or intentional disregard of the employer's interests.

d. Lost or stolen property, unless the property is equipment specifically assigned to, and receipt acknowledged in writing by, the employee from whom the deduction is made.

e. Gratuities received by an employee from customers of the employer.

f. Costs of personal protective equipment, other than items of clothing or footwear which may be used by an employee during nonworking hours, needed to protect an employee from employment-related hazards, unless provided otherwise in a collective bargaining agreement.

g. Costs of more than twenty dollars for an employee's relocation to the place of employment.

(Emphasis supplied.)

The employer's failure to pay full wages as due and/or unlawful payroll deduction created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The decision of the representative dated March 16, 2015, (reference 01) is reversed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/css