

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

MELODEE G PERRETT  
477 - 250<sup>TH</sup> ST  
SCRANTON IA 51462-7643

CARE INITIATIVES  
c/o JOHNSON & ASSOCIATES  
PO BOX 6007  
OMAHA NE 68106-6007

Appeal Number: 06A-UI-06781-SWT  
OC: 06/04/06 R: 01  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 2, 2006, reference 01, that concluded she voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on July 24 and 27, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Julie Graesch. Lynn Corbeil participated in the hearing on behalf of the employer with witnesses, Brynn Eitzen and Heidi Ball. Exhibits A through E and H were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full-time as a nurse in the employer's nursing home facility from January 2, 1995 to April 4, 2006. Her supervisor was the director of nursing, Heidi Ball. The claimant had repeatedly complained to Ball about the conduct of a certified nursing assistant,

Becky Jacobson, who would not follow instructions given by the claimant, would yell and slam doors and would not perform her assigned work. After receiving the complaints, Ball attempted to separate the claimant and Jacobson starting in January 2006 by making sure they were not scheduled to work together, except for one time in February. On that occasion, Jacobson became upset about having to clean wheelchairs and had a fit of anger that caused the claimant to send her home.

The claimant had worked with another nurse, Bethany, on one occasion a few months before she left employment. Bethany approached the claimant during work hours and encouraged her to read a book she had about spiritualist, Sylvia Brown. When the claimant indicated that she was not interested, Bethany told her she was evil and was going down the wrong path. The claimant complained to Ball about Bethany's conduct and proselytizing. Ball counseled Bethany about her conduct. The claimant never had to work on the same shift with Bethany, but the nurses' shifts overlapped and the claimant continued to have conflicts with Bethany during this report period. Bethany continued to make critical comments about the claimant and continued to talk about her spirituality despite the claimant's complaints and the counseling she had received. Coworkers reported to the claimant that Bethany referred to the claimant using vulgarity.

At the end of March, one of the other certified nursing assistants, Dixie Warshek, quit employment due to the treatment she received from Jacobson and Bethany. As a result, the claimant was scheduled to work with Jacobson on April 4 and with Bethany on April 5, 2006. The claimant was not consulted about the schedule changes.

After working with Jacobson on April 3 and 4 and considering the prospect of working with Bethany on April 5, 2006, the claimant decided that she could not continue to work for the employer under the working conditions of working with Bethany. She considered the conditions intolerable and detrimental. She wrote a letter to the employer resigning from her employment. Afterward, Ball called the claimant by phone and stated that the employer was accepting her resignation.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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

Iowa Code section 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.

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.

Prior to the recent 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 understanding of the precedent established by the Iowa Supreme Court in Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993), which established two conditions that must be met to prove a quit was with good cause when an employee quits due to intolerable working conditions. 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 also overruled the holding of Swanson v. Employment Appeal Board, 554 N.W.2d 294, 297 (Iowa Ct. App. 1996), that a claimant who quits due to unsafe working conditions must provide notice of intent to quit. Hy-Vee Inc., 710 N.W.2d at 6.

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 intolerable condition. The employer’s failure to take effective action to remedy the situation then makes the good cause for quitting “attributable to the employer.” In addition, the claimant should be given the ability to show that management was independently aware of a condition that is objectively intolerable to establish good cause attributable to the employer for quitting.

Applying these standards, the claimant has demonstrated good cause attributable to the employer for leaving employment. The claimant complained repeatedly about Jacobson’s and Bethany’s intolerable conduct, but no effective action was taken to resolve the problems and the problems reoccurred. Ball scheduled the claimant to work with Jacobson and Bethany despite her knowledge of the conflicts between the employees. She did not talk to the claimant before creating the schedule even though the claimant had made it clear that she did not want

to work with Jacobson due to their history of conflicts and even though the claimant had expressed her complaints about Bethany's conduct toward her.

DECISION:

The unemployment insurance decision dated June 2, 2006, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/cs