

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CASSIE L RONEK
Claimant

APPEAL 19A-UI-08947-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOC BLACK HAWK COUNTY INC
Employer

**OC: 10/20/19
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:

On November 13, 2019, IOC Black Hawk County, Inc. (employer) filed an appeal from the November 5, 2019, reference 01, unemployment insurance decision that allowed benefits based upon the determination Cassie L. Ronek (claimant) quit due to detrimental working conditions. The parties were properly notified about the hearing. A telephone hearing began on December 9 and concluded on December 20, 2019. The claimant participated personally. The employer participated through Tori Jermeland, Human Resources Director. The Claimant's Exhibits A through C and the Employer's Exhibits 1 through 3 were admitted into the record without objection.

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 Houseperson/Trainer beginning on May 11, 2018, and was separated from employment on October 19, 2019, when she quit. The employer's facility is a hotel and will have bed bugs on occasion. The employer has a policy regarding how to handle a bed bug infestation; however, the policy was not followed. The claimant complained to her supervisor throughout her employment that the employer did not take adequate steps to eradicate bed bugs.

At the start of her shift of October 19, the claimant was notified by another houseperson that bed bugs were again present in at least one room. The claimant notified her supervisor and told her that not enough was done to take care of the issue. During her shift, the claimant reported to management that she had been bitten by bed bugs while working. She did not go to their

doctor due to scheduling with her daycare provider, but did go to her own doctor. The claimant's doctor confirmed the bites were consistent with bed bug bites and gave her cream for treatment. The claimant quit due to a multitude of reasons including the bed bugs.

The claimant has received unemployment benefits in the amount of \$846.00, since filing a claim with an effective date of October 20, 2019, for the five weeks ending November 23, 2019. Tori Jermeland, Human Resources Director, participated in the fact-finding interview on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment with good cause attributable to the employer. Benefits are allowed. As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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 (Fla. Dist. Ct. App. 1973). Where a claimant gives numerous reasons for leaving employment, Iowa Workforce is required to consider all stated reasons which might combine to give the claimant good cause to quit in determining any of those reasons constitute good cause attributable to the employer. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534 (Iowa 1985).

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. The Iowa 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).

The decision in this case rests, at least in part, upon the credibility of the parties. The employer did not present a witness with direct knowledge of the situation. No request to continue the hearing was made and only a written statement of the claimant's supervisor was offered. As the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

Bed bugs are a part of the hotel service industry and their mere presence in a hotel does not give rise to intolerable or detrimental working conditions. The employer's action or lack of action to prevent harm to its employees is what makes the working conditions intolerable or detrimental. In this case, the employer has a policy related to how rooms with bed bugs are to be treated. However, the evidence shows the employer's practices did not align with the policy when actually treating rooms infested with bed bugs. The claimant complained to her supervisor on multiple occasions that the employer's practices were insufficient to eradicate the bed bug issue and protect the employees. On her last day of employment, the claimant was bitten by bed bugs and required medical treatment. The claimant has established that she quit due to detrimental working conditions which constitutes good cause attributable to the employer. Accordingly, benefits are allowed.

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

DECISION:

The November 5, 2019, reference 01, unemployment insurance decision is affirmed. The claimant voluntarily left the 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 charges to the employer's account cannot be waived.



Stephanie R. Callahan
Administrative Law Judge

December 20, 2019
Decision Dated and Mailed

src/scn