CLARINDA MASIRAG Claimant **ABRH LLC** Employer	**APPEAL NO. 14A-UI-10045-SWT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/24/14** **Claimant: Respondent (1)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 18, 2014, reference 01, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on October 16, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Pixie Allan participated in the hearing on behalf of the employer with witnesses, Dan Pike and Chris Norris. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked as an assistant manager for the employer from May 26, 2013, to July 27, 2014. Chris Norris was the restaurant manager starting in April 2014. Dan Pike was the operations director.

The claimant had complained to Pike several times about Norris' unprofessional conduct, including (1) chronically reporting late for work, which required the claimant to work beyond the end of her shift, (2) showing up in a disheveled condition, unshaven and not dressed for work, and shaving and brushing his teeth at work, and (3) treating the claimant harshly and disrespectfully. Pike told the claimant that he would address her concerns, but no effective action was taken and the problems continued.

The claimant was scheduled to work from 5 p.m. to 5 a.m. on June 27-28, 2014. Norris was scheduled to relieve the claimant as manager on duty at 5 a.m. When Norris failed to report to work as scheduled, the claimant tried repeatedly to call him and left messages. When Norris did not respond to the phone calls, the claimant called Pike and explained what had happened. Pike ended calling Norris about 7 a.m. and woke him up because he had overslept.

When Norris showed up for work, the claimant had been working for over 14 hours. After arriving, he yelled at and angrily questioned the claimant about why she had notified Pike that

he was not at work. He told her that she had been late in the past and he never reported that to Pike. He suggested to the claimant that if she were late in future, he would report it to Pike. The claimant felt that Norris was threatening and believed she smelled alcohol on her breath. She was concerned about his intimidating treatment of her.

After she left the restaurant, the claimant ended up sending a text message to Pike complaining that Norris had yelled at her and threatened to report her if she were late, which she considered retaliation. She told Pike that she did not feel safe working with Norris. Pike responded that he would address the situation and he would see her when she reported for her next shift.

The claimant reported to work for her next scheduled shift, but Pike was not there and did not speak with her or assure her that he had addressed the situation. She was scheduled to go on a one-week vacation starting on June 30. Because of the situation with Norris, she texted Pike and requested an additional week of vacation as a break from the stress. She told Pike again that she did not feel comfortable working with Norris until after he had addressed her concerns about his conduct.

The claimant returned from her vacation on July 16. When she returned, Pike did not speak to her or assure her that he had addressed the situation with Norris. She submitted a notice on July 17 that she was quitting effective July 27. Her notice did not state why she was quitting.

She quit because of Norris' treatment of her and his unprofessional conduct, which caused her to lose respect for him as a supervisor. She quit because she never heard anything back from Pike to let her know that the situation had been corrected. She was concerned about retaliation based on her complaint against Norris.

The claimant moved back to the Las Vegas, but her reason for quitting was not to relocate but because of working conditions.

REASONING AND CONCLUSIONS OF LAW:

The issue here is whether the claimant had good cause attributable to the employer to quit her job.

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1.

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.

Before the Supreme Court decision in Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005), this case would have been governed my understanding of the precedent established in Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The Cobb case established two conditions that must be met to prove a quit was with good cause when an employee quits due to intolerable working conditions or a substantial change in the contract of hire. 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 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 or a change in the contract of hire that they consider substantial 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 unacceptable condition or change. The employer’s failure to take effective action to remedy the situation then makes the good cause for quitting “attributable to the employer.”

Applying these standards, the claimant has demonstrated good cause attributable to the employer for leaving employment. Conditions at work were intolerable for the claimant. She notified Pike on more than one occasion about the conditions at work but no effective action was taken to correct the problems and Pike, even though he said that he would talk to her about the situation, never assured her that he had addressed the situation.

DECISION:

The unemployment insurance decision dated September 18, 2014, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

____
Steven A. Wise
Administrative Law Judge

____
Decision Dated and Mailed

saw/pjs