

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LACEY J BURGAN

Claimant

UNITED HEATING & AIR CONDITIONING

Employer

APPEAL 14R-UI-04699-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/13/13

Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The employer filed an appeal from the November 1, 2013, (reference 01) unemployment insurance decision that allowed benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on May 28, 2014. Claimant participated. Claimant's proposed witnesses Annam Pran and Michael Miller were not available when the hearing was called and did not respond to the administrative law judge's (ALJ) message before the record was closed. Employer participated through office assistant and spouse of owner Dustin Wipf, Kimberly Wipf. Dustin Wipf was not available because he was on business calls and did not participate. The administrative law judge took official notice of the administrative record and prior hearing record.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an hourly office manager and was separated from employment on October 16, 2013. On October 15, claimant was preparing food on behalf of the employer for the Taste of Altoona trade show after work with Kimberly Wipf. Dustin expected her to make after hours reminder calls for preventative maintenance off-the-clock and without pay. Claimant had volunteered to help with the food preparation but not the reminder calls or to spend time at the trade show. Dustin Wipf wanted claimant to create a bill of sale for a vehicle he had purchased but had not transferred title to his name to avoid transfer taxes. He wanted to transfer or trade that vehicle for a company vehicle. She declined since there had been concerns about earlier transfers and tax issues and she also said she was overwhelmed with that amount of work on top of her regular job duties. He told her he did not pay her to argue with him. They argued a bit and he became more upset screaming, throwing things, and slamming the door. Kimberly Wipf was also present. Claimant feared for her safety so left. He sent a text message later that afternoon asking when she would return to work. She texted back and said she would not. He asked her to show Kimberly Wipf how to do a few job tasks and claimant agreed, working less than a half hour to do that on October 16.

Claimant had told Dustin Wipf, his father commercial manager Don Wipf, and Kimberly Wipf in a meeting on August 12, 2013, about her concerns of how she was spoken to, what Dustin asked her to do, the lack of support, and related complaints. The conditions improved for two weeks and began again. Dustin regularly yelled and swore at her and once wiped lacquer thinner on claimant's arm without her permission and even after she told him to stop. He made sexual comments towards and about her. (Administrative Record.)

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) 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.

Iowa Admin. Code r. 871-24.26(3) 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:

- (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 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 U.S. Supreme Court has held that a cause of action for sexual harassment may be predicated on two types of harassment: (1) Harassment that involves the conditioning of concrete employment benefits on sexual favors, and (2) harassment that, while not affecting

economic benefits, creates a hostile or offensive working environment. *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 62 (1986).

“The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made.” *Myers v. Emp’t Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). Inasmuch as an employer can expect professional conduct and language from its employees, claimant is entitled to a working environment without being the target of abusive, obscene, name-calling. An employee should not have to endure bullying or a public dressing down with abusive language 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.

Chapter 91 of the Code of Iowa requires payment of wages for all hours during which an employee’s presence is required. Thus, the employer is responsible to pay wages to its employees from the time they are required to be at work or work on behalf of the employer, even if at a trade show or other event outside of regular work hours. An employer may not accept the benefit of work performed by its hourly employee without counting the time in computing pay due under the Fair Labor Standards Act (FLSA). See also, <http://www.iowaworkforce.org/labor/wagefaqs.pdf>
<http://www.dol.gov/whd/regs/compliance/whdfs22.pdf>

The employer’s demand for claimant to work hours without being paid (regardless of “volunteer” status), the request to perform what claimant reasonably believed to be illegal vehicle transfer documents, the physical assault (putting lacquer thinner on her arm without permission), verbal, sexual and belittling and harassment created an intolerable work environment for claimant that gave rise to not just one, but many good cause reasons for leaving the employment. Benefits are allowed.

DECISION:

The November 1, 2013, (reference 01) decision is affirmed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css