

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEFFERY D VANFOSSON
Claimant

IA DEPT OF HUMAN SVCS/GLENWOOD
Employer

APPEAL 17A-UI-04567-NM-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/02/17
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 21, 2017, (reference 02) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on May 22, 2017. The claimant participated and testified. The employer participated through Hearing Representative Sandra Linsin and witnesses Natalie McEwen and Kathy King. Employer's Exhibits 1 and 2 were received into evidence.

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 a residential treatment worker from April 27, 2006, until this employment ended on November 11, 2017, when he voluntarily quit.

On October 28, 2016, claimant tendered his written resignation. (Exhibit 1). The resignation was effective November 11, 2016. Claimant quit because he was getting too stressed and burned out by his job. Claimant regularly worked five days a week, plus overtime. Claimant's average overtime for the last year of his employment was four hours a week, but the last several months of his employment he was working between 11 and 19 hours of overtime each month. Claimant testified he had not been allowed to use any vacation time in the last two years and had approximately 50 requests for vacation denied over his last two years of employment. The regular overtime and lack of vacation led claimant to develop anxiety, for which he sought medical treatment. Claimant's doctor did not tell him he had to quit, but strongly suggested he find other employment. Claimant testified he had found other employment at the time he resigned, but testified he would have quit even if he did not have another job lined up.

The employer confirmed claimant used very little vacation time and what time he did use was due to illness or because he was taking approved FMLA leave. The employer explained that

vacation requests are granted on a seniority basis and claimant's requests were denied because others with more seniority had made requests for the same time period. Had claimant not resigned, work would have continued to be available to him.

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.

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). 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 last two years of employment claimant submitted approximately 50 vacation requests that were denied because other employees who had more seniority had also requested the time off. This led to claimant not being allowed to take any vacation time, except for illness or FMLA, in a two year period. Claimant became stressed and burned out and developed anxiety. Claimant's doctor suggested, but did not require, he find other employment. Although claimant did not have the advice of his physician to quit the employment, a reasonable lay person or employer would know that working for two years without being allowed to take a vacation and with no relief in sight, is very likely to create an intolerable strain on even an otherwise healthy worker's physical and mental health. Thus, claimant has established good cause reasons for leaving the employment. Benefits are allowed.

DECISION:

The April 21, 2017, (reference 02) unemployment insurance decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/scn