IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 - EI

VALERIE L RALEY
Claimant

MCSOIFER'S INC
Employer

APPEAL NO. 07A-UI-10531-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/21/07 R: 03
Claimant: Respondent (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 13, 2007, reference 01, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on November 30, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Sam Soifer participated in the hearing on behalf of the employer with a witness, Karla Warnke. Exhibit A 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 full time for the employer as a team lead worker from October 31, 2005, to October 17, 2007. Karla Warnke was the store manager. The claimant was scheduled to work on October 17 but quit employment before punching into work.

The claimant had worked the night before with Ashley Sherman and shift manager, Tia Hyler. Shortly after midnight, another employee, John Franzen, came into the restaurant after it had closed. The claimant told Franzen he was not supposed to be in the restaurant after close. Franzen ignored the claimant and went to talk to Sherman. A short time later, Hyler allowed Sherman to leave after Sherman had said she had finished her work. Sherman then left with Franzen.

The claimant ended up completing some work Sherman had not finished. After the restaurant closed, Hyler and the claimant waited in the claimant's car for Hyler's ride to pick her up. The claimant told Hyler that Sherman's boyfriend, Daniel, would not be happy if he knew Sherman had left with Franzen. Hyler suggested calling Daniel to let him know, but she did not follow through.

On her way home from work, the claimant called her sister, Candy, who also works for the employer and told her what had happened that night with Sherman and Franzen and about their

leaving together. She told Candy that Franzen and Sherman had spent five to ten minutes in the break room, and she did not whether they were making out or not.

When the claimant reported to work the next day, Candy was at work. She approached the claimant while she was in her car and told her that she had called Daniel's brother and told him about Sherman and Franzen. When the claimant went into the restaurant, Hyler said that Sherman was on the phone and was angry and wanted to talk to the claimant. The claimant told Hyler she did not have time to talk. The claimant overheard Sherman on the phone with Hyler say that she was going to "beat her to a bloody fucking stump."

The claimant then went back outside. Hyler came out several minutes later and told the claimant that Sherman had called the assistant manager, Amy Fear. Hyler informed the claimant that Fear had said that the claimant needed to call Daniel and tell him that what was said was all lies or she would not have a job. The claimant responded that it was not her problem to fix so she guessed she did not have a job. Hyler then backtracked and said that Fear had not said she would not have a job but Fear told her the claimant needed to fix the situation. The claimant then asked Hyler what was going to be done about Sherman's threat, because she could not work with someone who had threatened her. Hyler told her that nothing would be done until the store manager, Karla Warnke, returned from vacation on October 22 and she would have to deal with it and avoid Sherman as much as possible. As a shift manager, Hyler had the authority to issue discipline such as a written warning or consult with upper management about what action to take to resolve the situation.

At that point, the claimant went back in the restaurant and put some of Hyler's belongings that were in her car on the counter. She then left the restaurant. Another shift manager, Ashley Rodgers, came out of the restaurant and asked the claimant where she was going. The claimant responded that she was not going to apologize for something she did not do. The claimant intended to quit her employment when she left the restaurant. She quit because (1) Sherman had threatened her with physical violence, (2) Hyler, who had heard the threat, had not done anything about it and had told her nothing would be done until the Warnke returned to the restaurant, and (3) Hyler and Fear had demanded that she fix the situation when she did not believe she had done anything wrong.

REASONING AND CONCLUSIONS OF 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.

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 directly 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 employees, 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 unacceptable 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. An employee threatened the claimant with physical violence and did so directly to Hyler, who was the manager in charge of the shift that day. The threat was made after Hyler had reported to work at the restaurant. Hyler consulted with an assistant manager, Amy Fear, about the situation. Fear decided that the claimant was required to fix the situation by calling the Sherman's boyfriend. Hyler communicated this to the claimant as the solution to the problem. An employee has the right to expect that a manager would take effective action when a threat of violence is made by one employee to another employee. Hyler had the authority to issue a write up and clearly could have taken other actions, including consulting with upper management to assure the claimant that her concerns were being addressed. Instead, when the claimant asked Hyler what was going to be done about the threat, Hyler responded that "nothing would be done" until Warnke returned. This was an unacceptable response for a member of management to make under the circumstances and created intolerable working conditions that are attributable to the employer since Hyler was acting as a management's agent in this instance.

This is not to say that the claimant is totally blameless in the events that occurred. Even though she was venting to her sister and mistakenly believed it would go no further, she was unquestionably gossiping, which often has a way of spreading and causing trouble.

Furthermore, it is possible that things would have been resolved or blown over if she had not left work that day. At the point she quit, however, she had satisfied the law's requirement for demonstrating good cause attributable to the employer for quitting.

DECISION:

The unemployment insurance decision dated November 13, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw