

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

INGRID J COBB
Claimant

1ST TRUST & SAVINGS BANK
Employer

APPEAL 15A-UI-08980-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/05/15
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 31, 2015, (reference 02) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on August 28, 2015. Claimant participated. Employer participated through vice president, Danette Bernacki and president, Ross Stuedemann.

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 teller from February 28, 2015, and was separated from employment on May 8, 2015, when she quit, giving notice. Most recently coworker Donna chastised her for wearing jeans one day at the end of April 2015, while Bernacki was on vacation. Donna did not have supervisory authority to do so. Claimant reported her concern to Bernacki when she returned and Bernacki told claimant she would talk to Donna. Bernacki told her that they do not allow employees to wear jeans but Donna had no right to discuss that with her. Claimant had complained to Bernacki in the past about Donna talking down to her, sighing audibly in frustration, refusing to help or answer questions, being “snappy” with her and “snatching papers” from her hand. Donna also criticized claimant for eating on occasion to control her diabetes. It got to the point that she asked questions of others rather than speak to Donna. Bernacki made excuses for Donna and told claimant that Donna treated other employees the same way too. Claimant had lodged her first complaint in late March or early April 2015, about Donna’s tone, that Donna grabbed paper out of her hand, or threw paper on the teller counter. Bernacki told claimant that Donna worked in the operations department and was responsible for teller paperwork; Donna was likely frustrated with claimant’s absenteeism and error rate. Bernacki acknowledged that Donna treats everyone “harshly” and others have complained about Donna’s tone also. Bernacki spoke to Donna about claimant’s complaint and told her to “mellow out” and told her about claimant’s medical condition, but her behavior towards claimant did not change.

Claimant was paid two weeks' wages in lieu of notice through May 15. She filed an unemployment insurance claim effective July 5, 2015.

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).

Claimant is not considered overly sensitive since Bernacki also had complaints from other employees about Donna's harshness. Thus, Donna's ongoing verbal harassment of claimant, especially with the employer's knowledge of the issue, created an intolerable work environment for claimant that gave rise to a good-cause reason for leaving the employment.

DECISION:

The July 31, 2015, (reference 02) unemployment insurance decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css