

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUE K ABBOTT
Claimant

APPEAL 22A-UI-04067-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MICHAELS BAKERY PRODUCTS LLC
Employer

**OC: 01/02/22
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions

STATEMENT OF THE CASE:

The claimant, Sue K. Abbott, filed an appeal from the January 25, 2022, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary resignation. The parties were properly notified about the hearing. A telephone hearing was held on March 16, 2022. The claimant participated and testified. The employer, Michael's Bakery Products LLC., participated through Human Resources Manager Austin Svejda. Exhibit A was received into the record.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed full-time for the employer in two different roles in the employer's shipping / receiving and dry good departments from April 2021, until she was separated from employment on January 6, 2022, when she quit. The claimant's immediate supervisor just prior to her resignation was Supervisor Mike Kane.

The employer has an employee handbook. The employee handbook directs employees with work-related concerns to bring those concerns to the attention of their direct supervisor. If their direct supervisor does not correct the situation, then the employee is directed to bring the concern to the attention of the human resources department. The employer's human resources department also has a complaint form to make written complaints. The claimant was aware of the process outlined above. She was unaware of the written complaint form.

On May 31, 2021, Baltazar Montejo Domingo arrived at work smelling like alcohol. Mr. Domingo was loud and abrasive with the claimant, as he was on most days after he had been drinking. In particular, Mr. Domingo told the claimant she did not know what she was doing and

said she was in the way. Mr. Domingo then turned to Juan Hernandez and they had a short conversation in Spanish. The claimant relayed these observations to Plant Manager Brad (last name unknown). Management did not take any action regarding the report she made.

On June 15, 2021, the claimant was promoted to the position of supervisor. In this new role, the claimant was tasked with conveying directions to Mr. Domingo and Mr. Hernandez from Chief Financial Officer Liz Mann. The claimant did not have the power or authority to discipline Mr. Domingo or Mr. Hernandez without Ms. Mann's approval.

On June 30, 2021, Eduardo (last name unknown) was working his first day in the shipping and receiving department. Mr. Domingo and Mr. Hernandez were supposed to train Eduardo. Instead, Mr. Domingo and Mr. Hernandez trained Eduardo incorrectly, so they could call him stupid. Mr. Domingo and Mr. Hernandez' practice was to refer to employees targeted by such gaslighting as "dumb girl" or "dumb guy." If an employee pointed out this was how they were trained by Mr. Domingo or Mr. Hernandez, they replied, "No I didn't." That same day, Mr. Hernandez was driving the forklift around the plant in a dangerous manner. The claimant told Mr. Hernandez he was driving too fast in the plant and cautioned for him to slow down. Mr. Hernandez mumbled something in Spanish and continued to drive in a reckless manner. The claimant was so afraid for her safety that she used pallets as a protective barrier at times. The claimant reported these concerns to management. Mr. Domingo received a verbal warning. Mr. Hernandez did not receive discipline.

At some point in July 2021, the claimant ordered Mr. Domingo to come over from the shipping and receiving department to the dry goods department to help it with work for the day. Mr. Domingo replied, "I am going home." This led the claimant and the rest of her subordinates to struggle through completing work in both departments. This was even more difficult because the claimant had not been trained on all of the processes in both departments.

On July 6, 2021, Mr. Domingo arrived at work hung over from drinking the night before. Mr. Domingo refused to answer the claimant's questions regarding work that needed to be completed. He threw paperwork in the trash. He called the claimant a "fucking bitch." Mr. Hernandez was driving the forklift in a dangerous manner. The claimant once again cautioned him to slow down. Mr. Hernandez asked, "Who the hell are you?" Mr. Hernandez then added, "Three fucking women," as a reference to the claimant, Ms. Mann and Purchasing Manager Angie Harris. The context of the statement was that Mr. Hernandez thought it was unbelievable he was receiving orders from three different women.

On August 5, 2021, Mr. Domingo arrived at work hung over from drinking the night before. Mr. Domingo was so disrespectful and belligerent on that day, the claimant told Quality Control Officer Crystal (last name unknown) that she was quitting. Crystal urged the claimant to speak with Owner Don Cooksey. Mr. Cooksey offered to transfer the claimant to the dry goods department as a means of getting her out of Mr. Domingo's presence. The claimant accepted the offer.

At some point in August 2021, Ms. Mann directed the claimant to implement a new system for shipping. A new employee Dillon (last name unknown) was working his first day in the shipping and receiving department. Mr. Hernandez was supposed to train Dillon. When directed, Mr. Hernandez replied, "I don't have time. You don't know what to do." Production Manager Don (last name unknown) reminded Mr. Hernandez that the claimant was his supervisor. Mr. Hernandez replied, "If that bitch is my supervisor, then I quit." Mr. Hernandez then walked out of the plant. The claimant reported this incident to Ms. Mann. The employer did not take any corrective action regarding this incident.

On August 9, 2021, Ms. Mann directed the claimant to report to the dry goods side to organize and tag products there. The dry goods department was in such disarray that the claimant was not able to make much progress.

On August 26, 2021, Mr. Domingo reported to work hungover. Once again, Mr. Domingo was belligerent. The claimant reported this to management. No corrective action was taken.

On August 27, 2021, Mr. Domingo did not show up for work. The shipping and receiving department was already going to be short-handed, but Mr. Domingo's absence meant the claimant had to perform the duties of the department on her own. This did not change management's output expectations.

On August 30, 2021, the claimant went back to work in the shipping and receiving department. The claimant discovered on that day that Mr. Domingo had been training Dillon incorrectly since he started working there. Mr. Domingo had disregarded Ms. Mann's implementation of a new system for shipping.

On September 3, 2021, the claimant was frustrated because Dillon was acting in a belligerent manner. Specifically, Dillon told the claimant that she had no idea what she was doing because she had been working on the dry goods side of the warehouse. He admonished her to get off of her "high horse" and stop having a "power trip." The claimant reported this behavior to Sales Associate Nicole (last name unknown). Nicole informed the claimant that Mr. Cooksey was present and suggested she inform him of her concerns. The claimant informed Mr. Cooksey, who followed her back to speak with Dillon. Dillon repeated what he had said to claimant earlier that day. Mr. Cooksey just stood there and did nothing to correct Dillon's behavior. The claimant became so disgusted she handed her key card to Cooksey. She exclaimed, "I can't do this anymore," and walked out of the plant.

On September 8, 2021, Nicole called the claimant asking if she would come back to the plant after informing her that Dillon had been terminated. Nicole added that Ms. Mann had made the observation that the shipping and receiving department was short-handed. The claimant agreed to return to the plant.

In October 2021, Mr. Domingo returned from taking vacation. Mr. Domingo was hungover that day. The claimant confronted Mr. Domingo because he was still not performing his work according to Ms. Mann's new system. Mr. Domingo replied that it did not work for him and dismissed Ms. Mann's system as irrelevant because she did not work in shipping and receiving. Mr. Domingo then called the claimant a "fucking bitch" and said she had no idea what she was doing. Mr. Domingo then told the claimant he would be quitting because he could make more money at a new job. That same day, Mr. Domingo asked Ms. Mann to advanced him some money to help his relatives immigrate from Guatemala.

On October 31, 2021, Mr. Domingo reneged on his resignation. Mr. Domingo merely stated to Ms. Mann that he likes his job and wanted to stay. Ms. Mann accepted his offer to renege his resignation.

On November 17, 2021, Adam Hunter was hired to be the new plant manager. Mr. Domingo reported to work hung over again. The claimant reported this to Mr. Kane and Mr. Hunter. Mr. Hunter sent the claimant home because he was still under the influence of alcohol, but he told him that he could return for his shift beginning at 2:00 p.m., if he was sober. That same day, the claimant became aware that Ms. Mann had labeled the shipping department as the "bad news

bears.” Mr. Kane assured the claimant that if Mr. Domingo “even farts wrong,” then he would be terminated. Mr. Domingo returned at 2:00 p.m. Mr. Domingo was still hungover. He derisively greeted the claimant with, “Beer for lunch Sue?” As the claimant was leaving the plant at 3:00 p.m., Mr. Domingo baited the claimant again stating, “Beer for supper Sue?” The claimant reported Mr. Domingo’s comments to Mr. Kane on November 18, 2021. No corrective action was taken regarding this incident.

On January 3, 2022, the claimant returned from vacation. Ricardo Rodriguez informed the claimant that Mr. Hernandez was constantly referring to the claimant as a “bitch.” On the day she returned, Mr. Hernandez said, “I see the bitch is back. I cannot stand that fucking bitch. She is a stupid piece of shit.” Mr. Domingo and Mr. Hernandez said the claimant had no idea what she was doing to Mr. Rodriguez. Mr. Domingo and Mr. Hernandez also told Mr. Rodriguez that they thought the claimant was racist.

On January 4, 2022, the claimant told Mr. Kane the concerns raised by Mr. Rodriguez the previous day. The claimant was alarmed by their characterization of her as a racist. Mr. Kane informed Mr. Svejda that the claimant and Mr. Ricardo had reported to him. Mr. Svejda interviewed Mr. Ricardo regarding the allegations and asked him to write a statement. The claimant requested Mr. Ricardo’s statement. Mr. Svejda told the claimant that he was not sure if she could get a copy of Mr. Ricardo’s statement, so he read it to her. Mr. Svejda then opined that Mr. Domingo and Mr. Hernandez did not like her being in charge due to their “culture.” The claimant began crying because she believed nothing would be done to correct the work environment.

On January 5, 2022, the claimant was so bothered by the outcome of this most recent report, that she called in sick for the day.

On January 6, 2022, the claimant informed Mr. Svejda and Ms. Mann that she would be resigning effective immediately.

The employer terminated Mr. Hernandez on January 6, 2022. Mr. Domingo was terminated on January 17, 2022.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant quit with good cause attributable to her 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.

Claimant had an intention to quit and carried out that intention by tendering a written resignation. As such, 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 (Ia. Dist. Ct. App. 1973).

“Good cause attributable to the employer” does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)(“[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith”); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer “free from fault”); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)(“The good cause attributable to the employer need not be based upon a fault or wrong of such employer.”). Good cause may be attributable to “the employment itself” rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956).

The claimant contends she resigned due to unsafe and intolerable working conditions. As such, if claimant establishes that she left due to intolerable or detrimental or unsafe working conditions, benefits are allowed.

Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, 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 concluded that, because the intent-to-quit requirement was added to 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. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

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:

- (2) The claimant left due to unsafe working conditions.
- (4) The claimant left due to intolerable or detrimental working conditions.

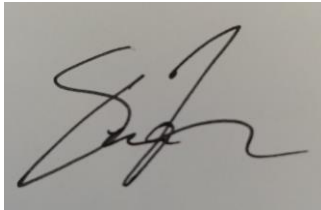
The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). In this case, a reasonable person would have believed that claimant's working conditions were unsafe, intolerable and detrimental to the claimant due to several factors.

The shipping and receiving department and dry goods departments were understaffed. This made the participation and cooperation of Mr. Hernandez, Mr. Domingo and other subordinates vital to running the department effectively. These subordinates blatantly disregarded the claimant's instructions numerous times. They intentionally trained new hires incorrectly. They also openly displayed their contempt for her and other women in the workplace. To make matters worse, Mr. Hernandez recklessly operated a forklift to the point that the claimant felt it necessary to shield herself with pallets on a handful of days. Mr. Domingo routinely reported to work either drunk or hungover, which in turn made him even more belligerent than he would

ordinarily be. After months of enduring these toxic conditions, the claimant's concerns were only taken seriously after Mr. Rodriguez, one of her male subordinates confirmed her allegations. Even then, Mr. Svejda appeared to diminish the behavior of Mr. Hernandez and Mr. Domingo as something culturally ingrained. This left the claimant believing that no corrective action would be taken and that it was futile to report her concerns internally. Perhaps Mr. Svedja is right and the claimant merely misunderstood what he was saying on January 6, 202. Given how poorly the employer responded to her numerous reports of inappropriate behavior, the administrative law judge finds Mr. Svedja's contention a distinction without a difference. The administrative law judge finds a reasonable person would have quit under these circumstances. Benefits are granted.

DECISION:

The January 25, 2022, (reference 01) unemployment insurance decision is reversed. The claimant quit with good cause attributable to the employer. Benefits are granted.



Sean M. Nelson
Administrative Law Judge
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March 29, 2022
Decision Dated and Mailed

smn/mh