

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JODI L GLASS
Claimant

KWIK SHOP INC
Employer

APPEAL NO. 14A-UI-10258-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/31/14
Claimant: Respondent (1)**

Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Kwik Shop, Inc. (employer) appealed an unemployment insurance decision dated September 22, 2014 (reference 01) which held that Jodi Glass (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 23, 2014. The claimant participated in the hearing. The employer participated through Amy Fletchall, Human Resources, and Drew Rigby, District Advisor. Employer's Exhibit One was admitted into evidence.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment, and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed with this employer from 1999 through 2001 and again from 2006 through 2011. She was hired as a full-time manager-in-training on April 1, 2013 and was promoted to a store manager in August 2013. The claimant's mother is a manager at a different store and her husband is a district advisor for six or seven other stores in the district.

The claimant's daughter has serious medical problems and she had to go out on leave under the Family Medical Leave Act (FMLA) on April 3, 2014. Prior to leaving, she and the employer decided it would be best for her and for the store if she stepped down to an assistant manager. The employer then put another manager in the claimant's position and the claimant was familiar with this person as she had been managing a different store. The claimant returned to work on May 12, 2014 and had problems with the store manager from the very beginning.

The new store manager created such a hostile work environment, that the claimant gave notice to quit on August 26, 2014. She hated to go to work and had advised her district advisor but nothing changed. The claimant really likes her employer but could not transfer because of family members working in different stores so she planned to work until September 2, 2014.

The claimant had to leave on September 1, 2014 due to continued crap from the store manager. She provided a detailed email explaining the manager sits in the office "87%" of the day and "only comes out to tell people what to do or attempt to run her register to make it look good." The manager "bad mouths people and runs from person to person spreading rumors." She told the claimant and two other employees they were lazy and that she "expected nothing to get done as we never do anything." The claimant explained that the manager was causing decreased sales and low morale. She just could not understand why no action had been taken when the employer was made aware of the problems.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

The claimant quit on September 1, 2014 due to intolerable work conditions created by the store manager. The district advisor confirmed he had problems with the store manager but he was new and he said he was trying to train the store manager as opposed to disciplining or removing her. Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code § 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993) (citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

A notice of an intent to quit had been required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 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 IAC 24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871 IAC 24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871 IAC 24.26(6)(b) but not 871 IAC 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).

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has satisfied that burden. Benefits are allowed.

DECISION:

The unemployment insurance decision dated September 22, 2014 (reference 01) is affirmed. The claimant voluntarily quit her employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/can