

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CATALINA ARREDONDO
Claimant

APPEAL 18A-UI-09209-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEEKS & LEO CO INC
Employer

OC: 08/05/18
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code 871-24.26(4) – Intolerable Work Conditions

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated August 31, 2018, (reference 02) that held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 21, 2018. Claimant participated. Employer participated by Sanjay Srivastava, Chief Operating Officer.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on August 9, 2018. Claimant submitted her resignation on that date.

Claimant began working for employer as the accounting manager on May 4, 2017. In January, 2018 claimant noticed that she was having money deducted from her account for dental insurance that she was not receiving. Claimant told Mr. Srivastava about the payroll error, and the error was never corrected.

Claimant witnessed multiple incidents of racial harassment and discrimination at work. Claimant witnessed two co-workers making cruel jokes about co-workers accents, race, and immigration status in March and April, 2018. Claimant told Mr. Srivastava about what she had witnessed and he did not take her concerns seriously. Mr. Srivastava believed that the comments were blown out of proportion, and were only jokes. Claimant worked in the office and she noticed racial comments and tension between co-workers becoming more prevalent. Claimant asked Mr. Srivastava to initiate inclusive training, and to hire a human resources employee who could help him deal with those issues. Mr. Srivastava did not take claimant's concerns seriously, and none of her suggestions were implemented.

On August 9, 2018, claimant decided that the racial tension and harassment had become intolerable. She no longer felt safe at work. Claimant notified employer that she was resigning, and she provided a two week notice. Employer accepted her resignation on that date, and she was asked to leave the employment immediately.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because she did not feel safe at work.

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.

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.

Iowa Admin. Code r. 871-24.26(3) 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:

(3) The claimant left due to unlawful 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). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

In the absence of an agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving employment. *Deshler Broom Factory v. Kinney*, 140 Nebraska 889, 2 N.W.2d 332 (1942).

Individuals who leave their employment due to disparate treatment are considered to have left work due to intolerable or detrimental working conditions and their leaving is deemed to be for good cause attributable to the employer. The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Dep't of Job Serv.*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Emp't Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

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 concluded that, because the intent-to-quit requirement was added to Iowa Admin. Code r. 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 tried to work with employer, and she did not want to end her employment. She felt unsafe at work, and employer did not take her concerns seriously. Claimant left the employment because her work environment was intolerable, her separation from employment was for a good-cause reason attributable to the employer. Benefits are allowed.

DECISION:

The decision of the representative dated August 31, 2018, reference 02, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn