

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JUSTINE L RUSH

Claimant

K & P SERVICES INC

Employer

APPEAL 18A-UI-01234-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/24/17

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 January 18, 2018, (reference 01) that held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 21, 2018. Claimant participated personally. Employer participated by Kay Kramer, Vice President. Employer's Exhibits 1-4, and Claimant's Exhibits A-C were admitted into evidence.

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 December 15, 2017. Claimant resigned from her employment on December 18, 2017.

Claimant began working for employer in July, 2017. Claimant was employed as a full-time roll off driver. On December 15, 2017, claimant was driving one of employer's vehicles. Claimant was contacted by the office and notified that she had to park her vehicle, and get out of it immediately because her vehicle had been designated as out of service by the United States Department of Transportation. Claimant immediately complied with the instructions she received. Claimant had to be driven home from that location in a different vehicle.

Over the weekend claimant went online and spoke with co-workers about what had occurred on December 15, 2017. Claimant discovered that she had been driving a truck that was subject to an out of service order from the Department of Transportation since November 27, 2017. Claimant was very upset because she feared she had been in violation of the law which could have led to her commercial driver's license being suspended or barred.

Claimant contacted employer on December 18, 2017 and notified it that she was quitting her employment immediately. Claimant turned in her equipment and did not return to work after that date.

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 her employment had become intolerable.

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's belief that she had placed her commercial driver's license in jeopardy while driving employer's truck after it had been deemed out of service by the Department of Transportation was reasonable. 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 January 18, 2018, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn