IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 - EI

STACY S STOEHR Claimant	**APPEAL NO. 09A-UI-03094-SWT**
	ADMINISTRATIVE LAW JUDGE DECISION
RAINTREE ENTERPRISES IOWA INC Employer	
	Original Claim: 02/01/09 **Claimant: Respondent (2-R)**

Section 96.5-1 - Voluntary Quit
Section 96.3-7 - Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 20, 2009, reference 01, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on March 23, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Marcy Schneider participated in the hearing on behalf of the employer with a witness, Krista Rosecrans.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer from June 1, 2007, to January 26, 2009. On July 9, 2008, he applied for and was promoted to the position of food and beverage manager, which involved managing about 30 employees, including workers in the hotel restaurant/lounge and convention center. In his position as food and beverage manager, he was a salaried employee and paid $40,000 per year. He had no set schedule and could schedule himself for a day off with notice to the general manager, Krista Rosecrans. The job had no job description.

Despite being able to set his own schedule and days off, the claimant felt compelled to work long hours by the work load of his job and the need to work when the hotel was short-staffed. Often when he scheduled a day off, he was called into work due to someone being absent or something coming up that needed attention. He was worked about 90 hours per week seven days per week at peak times. As of January 26, his last day off was Christmas day.

When problems arose with events or customer complaints were received, the claimant felt that Rosecrans and the sales manager, Sandy Thomas, were harsh and aggressive in criticizing his performance.

Starting in November 2008, the claimant began working as a server in the restaurant due to the restaurant being short-staffed and the employer's insistence that costs be reduced. The claimant would receive tips while he worked as server, and the tips had to be reported as pay. Without notice to the claimant, the employer began deducting his tips from his salary. The claimant asked Rosecrans and the bookkeeper about this. He was told that it had to be handled that way and the deductions continued.

The claimant was supposed to report to work on January 27, 2009, and attend a mandatory staff meeting and banquet event order meeting. On the morning of January 27, the claimant felt exhausted and was having some back pain. He decided that he was not going to report to work. He did not call work to inform anyone that he was not coming in. Rosecrans called several times to find out where the claimant was and left messages asking him to call back. Other employees also called and left messages for the claimant. The claimant did not return the messages.

The claimant planned to return to work on January 28 but was irritated by the phone calls he had received, which reinforced his decision that he could not take it anymore and was quitting. He did not report to work or contact the employer on January 28 or 29.

The claimant quit his employment because he was working too many hours and was stressed out, Rosecrans was too critical and harsh, the employer was deducting tips from his pay, and he was irritated by the repeated calls to him on January 27.

The claimant filed a new claim for unemployment insurance benefits with an effective date of February 1, 2008. The claimant filed for and received a total of $2,527.00 in unemployment insurance benefits for the weeks between February 1 and March 21, 2009, with $844.00 of the benefits used to offset an overpayment from 2007.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1. A claimant who quits employment due to intolerable or detrimental working conditions is considered to have quit with good cause. 871 IAC 24.26(4)

Before the Supreme Court decision in *Hy-Vee Inc. v. Employment Appeal Board*, 710 N.W.2d 1 (Iowa 2005), this case would have been governed by understanding of the precedent established in *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). The *Cobb* case established two conditions that must be met to prove a quit was with good cause when an employee quits due to intolerable working conditions. First, the employee must notify the employer of the unacceptable condition. Second, the employee must notify the employer that he intends to quit if the condition is not corrected. If this reasoning were applied in this case, the claimant would be ineligible because he failed to notify the employer of his intent to quit if the intolerable working conditions.

In *Hy-Vee Inc.*, however, the Iowa Supreme Court ruled that the conditions established in *Cobb* do not apply when a claimant quits due to intolerable or detrimental working conditions by reasoning that the *Cobb* case involved "a work-related *health* quit." *Hy-Vee Inc.*, 710 N.W.2d at 5. This is despite the *Cobb* court's own characterization of the legal issue in *Cobb*. "At issue in the present case are Iowa Administrative Code Sections 345-4.26(1) (change in contract for hire) and (4) (where claimant left due to intolerable or detrimental working conditions)." *Cobb*, 506 N.W.2d at 448.

In any event, the court in *Hy-Vee Inc.* expressly ruled, “notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions.” *Hy-Vee Inc.*, 710 N.W.2d at 5. The court in *Hy-Vee Inc.* states **what is not required** when a claimant leaves work due to intolerable working conditions but provides no guidance as to **what is required**. The issue then is whether claimants, when faced with working conditions that they consider intolerable, are required to say or do anything before it can be said that they voluntarily quit employment with “good cause attributable to the employer,” which is the statutory standard. Logically, a claimant should be required to take the reasonable step of notifying management about the unacceptable condition. The employer’s failure to take effective action to remedy the situation then makes the good cause for quitting “attributable to the employer.” In addition, the claimant should be given the ability to show that management was independently aware of a condition that is objectively intolerable to establish good cause attributable to the employer for quitting.

Applying these standards, the claimant has not demonstrated good cause attributable to the employer for leaving employment. First, the evidence does not prove the employer created intolerable or detrimental working conditions based on the long hours or lack of time off. He was a salaried employee and the number of hours he would be working was not discussed when he took the job. He was in charge of his own schedule. While I understand the long hours were fatiguing, there is no evidence the claimant ever went to management to resolve this problem. Second, the claimant could not remember any specifics about Rosencran’s or Thomas’s treatment of him, only that they were aggressive or harsh. This is not enough to show intolerable or detrimental working conditions. Third, when the claimant worked as a server, tips given to him directly or indirectly on a credit card receipt and had to be treated as pay. While the employer could have generously given the claimant the tips for his extra duty working as a server, the claimant has not pointed me to and I have not found anything illegal or improper. This would not be a breach of contract because the claimant was still getting pay totaling $40,000, with some coming in tips, which was all the employer promised him. Finally, there was nothing intolerable or detrimental about the claimant receiving calls after he failed to report to work or call in. The claimant ended up quitting by simply stopping reporting to work. He really made no effort to try to resolve his problems with his working conditions before quitting.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant’s employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated March 20, 2009, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw