

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KANDACE D ODOM
Claimant

APPEAL NO. 10A-UI-13344-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

G M R I INC
Employer

OC: 08/22/10
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 15, 2010 (reference 01) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on November 8, 2010. Claimant participated. Employer participated through general manager Jim Beltz.

ISSUE:

The issue is whether claimant voluntarily left the employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a server from October 2008 and was separated from employment on August 25, 2010. On July 5, 2010 Beltz, asked her to put on a uniform shirt (white, wrinkle-free, cotton broadcloth, button-down) he had available for employee purchase because he believed her collar was too loose. She tried the shirt on and thought was too tight on her chest. She showed Beltz and said she felt uncomfortable in it. He said he understood why but said that he still wanted her to wear it. She had not been confronted about how her uniform shirt fit in the previous two years and the to-go server shirt provided by the company was a size larger than the dining room server uniform shirt Beltz wanted her to wear. She had tried but was unable to find a button-down collar shirt that fit her appropriately both at the neck and chest. Beltz was unaware that men's shirts are fitted by collar circumference and sleeve length and women's shirts are generally fitted by dress size. On August 24 at a management golf outing with a manager and employee of the company claimant's boyfriend works for, someone from the employer told her boyfriend's employer that claimant is pregnant even though she had asked Beltz to keep the information to himself. He had told other management personnel.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with good cause attributable to the 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.

871 IAC 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.

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 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). 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 recently 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).

The employer's insistence that claimant wear a uniform shirt that was too tight across her chest, rather than allowing a loose collar when the button-down collar shirts meeting uniform requirements would not fit claimant at both measurements, created an intolerable work environment for claimant that gave rise to a good-cause reason for leaving the employment. Given the proximity in time between the management golf outing and the release of information to claimant's boyfriend's employer about her pregnancy, it is apparent that her medical confidentiality was violated, which also provides a good-cause reason attributable to the employer for quitting. Benefits are allowed.

DECISION:

The September 15, 2010 (reference 01) decision is affirmed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw