

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELIZABETH WADE
Claimant

BIOLIFE PLASMA LLC
Employer

APPEAL 17A-UI-09475-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/20/17
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 7, 2017, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on October 4, 2017. The claimant participated and testified. The employer did not participate. Claimant's Exhibit A was received into evidence.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a plasma center technician from September 22, 2016, until this employment ended on July 21, 2017, when she voluntarily quit.

On July 19, 2017, claimant asked to meet with Assistant Manager Derek Bostock about some concerns she had with the way he was treating her. Claimant testified she believed Bostock had been altering her time cards, as there had been several occasions where she was not properly paid for leave time and incidents when her times clocked in and out did not match what she knew them to be. Bostock had the ability to override her punches in the computer system. Claimant had previously confronted Bostock about the issue of her not being properly paid for leave time and each time he attributed the situation to computer errors or forgetting to submit her time. Claimant testified she could see such a thing happening maybe once or twice, but that this occurred more often than that. Claimant suspected Bostock was discriminating against her based on her age and color. This suspicion was based on the fact the Bostock would regularly hire and train new employees, with no prior experience, for phlebotomist positions, while claimant remained assigned to donor entry, despite her more than 20 years of experience. These decisions by Bostock would be accompanied by statements referring to the other employees as "young" and "pretty." When speaking with claimant Bostock would also generally refer to persons of color as "you people." Bostock continued to use this phrase even after

claimant explained to him that she found it offensive and asked him to stop. During the meeting on July 19 claimant told Bostock she felt like he was discriminating against her and asked if he had a personal problem with her. Bostock said he did not and denied doing anything to her time cards.

The following day, July 20, claimant was not permitted to take a lunch break or her normal 15 minute break. Shortly after 11:00 claimant had asked Bostock if she could go to lunch so she could eat before she had to work in the childcare area at noon. Bostock told her to wait and someone would be there to relieve her in a little bit. No one came to relieve claimant prior to noon, so she did not get her break. Around 2:30 another manager came and told claimant she could leave for the day but asked her to come to the office before she left. Claimant went to the office where this manager and Bostock informed her there had been some problems with the quality of her work. Bostock told claimant the individual working in the quality control department had been complaining claimant was making too many mistakes. This was the first claimant was hearing about issues with her performance. Claimant testified she had made mistakes in the past, but they were infrequent and were always brought to her attention directly by the employee in quality control. Bostock informed claimant she would need to be retrained in the position. Claimant found this to be humiliating, as she was the longest term employee, but agreed.

The following day, July 21, claimant came to work as scheduled. Bostock informed one of the trainers she would need to help claimant, as she was being retrained. Claimant testified the trainer looked surprised, but agreed. When the first new donor came in, claimant put his information in and requested a trainer to check her work. It took over 20 minutes for someone to become available to check her work. Claimant explained this was concerning because the performance guidelines put specific time limits in place and she believed this was an attempt for Bostock to find another way to discipline, or possibly terminate, her. Claimant felt as though all of this was retaliation for telling Bostock she felt he was discriminating against her. Claimant determined she could no longer work in an environment where she felt harassed and discriminated against and quit effective immediately.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 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.

...

- (4) The claimant left due to intolerable or detrimental 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). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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 recently concluded that, because the intent-to-quit requirement was added to rule 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 resigned after she was given reason to believe that she was being retaliated against by a supervisor following a meeting where she complained that she felt he was discriminating against her. Claimant presented unrefuted evidence that Bostock treated her different than younger employees and used inappropriate and offensive language to describe her, even after he was asked to stop. One day after claimant confronted Bostock about his treatment of her, she was denied her break periods and told she would need to be retrained due to issues with her performance that had never been mentioned before. The claimant had provided sufficient evidence to establish that Bostock created an intolerable work environment for her that gave rise to a good cause reason for leaving the employment. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The September 7, 2017, (reference 01) unemployment insurance decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs