IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

JESSICA K HARRIS **Claimant** **BRUS CONSTRUCTION, LLC** **Employer**	**DIA APPEAL NO. 21IWDUI2015** **IWD APPEAL NO. 21A-UI-03279** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 11/08/20** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On January 18, 2021, Jessica Harris (claimant) filed a timely appeal from the January 8, 2021 unemployment insurance decision that found she voluntarily quit work on November 5, 2020 and was ineligible for benefits.

A telephone hearing was held on March 9, 2021. The parties were properly notified of the hearing. The claimant participated personally and testified. Brus Construction (employer) participated through HR manager Melody Brantner and she testified. Witnesses Chad Brus, Andrea Vogt, Trisha Defofse, Lee Newberry, and Shawn McDermott also testified.

ISSUE(S):

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working at employer on May 29, 2018 as an accounting assistant. She worked fulltime with a set schedule. Her direct supervisor was Christina Brus who is the wife of co-owner Chad Brus. The last day claimant worked at employer was November 4, 2020 as she submitted a letter of resignation on November 5, 2020 citing an unhealthy work environment.

To be frank, this case is messy. However, a few aspects are clear. Multiple witnesses from both sides acknowledge that Chad Brus regularly screams or at least yells at his employees. It appears this screaming is a weekly occurrence. Mr. Brus frequently uses foul language when screaming at employees. Mr. Brus admitted that he can be “tough” on people but that is just part of the construction industry. Several witnesses credibly claimed that Mr. Brus would bring up personal issues during these “conversations.” Whether intentionally or unintentionally, because the office is small, when Mr. Brus would yell at people, others could hear the contents of the conversation.

Mr. Newberry noted that he happened to capture eighteen minutes of Mr. Brus berating claimant and two other employees on a voice recorder.

Mr. Brus is quoted as telling employees to "fuck off, I will fire you all" and "what the fuck is wrong with you." It is also clear that during claimant's employment, employer lacked sufficient avenues for employees to lodge grievances. While Mr. Brus had an open door policy, many felt uncomfortable lodging complaints against Mr. Brus to Mr. Brus or even Mrs. Brus, Mr. Brus' wife. While Mr. Brus would listen to concerns and there is evidence he would attempt to at least temporarily change his behavior, he would seemingly fall back into screaming at employees a shortly later. Ms. Brantner claimed employer has a grievance form that employees can complete but no employees were aware of the form or how to access it. During claimant's employment, employees also did not seem to have an HR contact outside of management.

Claimant felt belittled by being yelled at by Mr. Brus so many times. Claimant also feared disclosing personal information because she thought Mr. Brus would disclose such information to other people. She referenced Mr. Brus disclosing that another employee was victim to infidelity. Mr. Brus did not seem to dispute that the office was aware of such personal information regarding the other employee. Mr. Brus seemed to justify the disclosure stating that everyone in the office thought it was a good thing when he gave this employee money and a refrigerator full of food. Multiple witnesses testified to personally observing Mr. Brus scream at claimant. They all indicated this was beyond the scope of a typical reprimand and was unacceptable. Claimant claimed that Mr. Brus made several comments that questioned claimant's decision to have a child when she did. Claimant does though acknowledge that Mr. Brus never name-called her.

Claimant's experience is corroborated by several other employees who testified that they had to quit because of the frequent verbal abuse. Ms. Vogt testified that she could only stay there five months before she had to quit because of the yelling. She noted that she had received a good review but frequently being screamed at was just too much to stay employed there. Particularly this judge found Mr. Newberry very credible. Mr. Newberry stated Mr. Brus is a great person "99%" of the time but the 1% of time he is not he is "unbearable." Mr. Newberry also stated that Mr. Brus would bring up personal issues such as claiming that Mr. Newberry had too many dogs and too many kids. This helps corroborate claimant's claim that Mr. Brus made comments regarding the timing of her pregnancy. Mr. Newberry is not sure that Mr. Brus means to disclose certain personal information but because of the size of the office and how loud Mr. Brus would be, everyone could hear everything. Mr. Newberry noted that he often saw female employees cry after being yelled at. Mr. Newberry made very serious accusations regarding what Mr. Brus said about Mr. Newberry's son, which if true, is completely abhorrent. Mr. Newberry testified that by the end of his employment with employer he "couldn't think straight" because of the frequent actions by Mr. Brus.

Claimant also raised concerns that she feels like she is treated unfairly. However, it appears employer has worked with her a lot to accommodate certain issues the claimant has. Claimant was provided a paid maternity leave, was given additional compensation during the pandemic, allowed her to bring her baby to work, and adjusted her work schedule. Other employees such as Ms. Defofse felt an increased workload because of claimant's tardiness and other issues. However, this information really is not relevant as to whether claimant quit with good cause. Similarly, Mr. McDermott's testimony that claimant was torn up about quitting is also more of a red herring. Anyone quitting without another job lined up, especially when they have been compensated well, will have some reasonable second thoughts. However, the fact that she quit,

while being compensated well and without another job lined up, seems to indicate the situation was intolerable to her.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the January 8, 2021 unemployment insurance decision that found claimant is ineligible is reversed because the claimant voluntarily quit work with good cause attributable to the employer.

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. 871-24.25(21) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(21) The claimant left because of dissatisfaction with the work environment.

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.

The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.,* 494 N.W.2d 660 (1993).

While a claimant does not have to specifically indicate or announce an intention to quit if her concerns are not addressed by the employer, for a reason for a quit to be "attributable to the employer," a claimant faced with working conditions that she considers intolerable, unlawful or unsafe must normally take the reasonable step of notifying the employer about the unacceptable condition in order to give the employer reasonable opportunity to address his concerns. *Hy-Vee Inc. v. Employment Appeal Board*, 710 N.W.2d 1 (Iowa 2005); *Swanson v. Employment Appeal Board*, 554 N.W.2d 294 (Iowa 1996); *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973).

A notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

A general dislike of the work environment is not a good cause for quitting while unsafe, unlawful, intolerable and detrimental work conditions is good cause attributable to the employer.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4).

There are many layers to this case. As a preliminary matter, it is completely acceptable for an employer to reprimand an employee for attendance issues and work-related deficiencies. For example, when claimant was having childcare issues and was showing up late for work, the employer is completely within their right to write claimant up or even discharge her if the tardiness is excessive. While childcare issues are of course unfortunate, it is on the employee to be present at work when they are supposed to be. Similarly, having a boss with high expectations is not necessarily a bad or wrong thing. If an employee thinks that their boss is "piling on work" unfairly, they can choose to quit and find a job where the work burden is less. That would be an example of dissatisfaction with working conditions. Similarly, a subjective belief that your boss treats you generally unfairly is typically not enough alone to allow benefits. In this case, it appears employer worked with claimant in multiple ways to accommodate her personal issues.

Finally, the evidence is clear that employer compensates their employees quite well. Claimant for example was given paid maternity leave, which is still somewhat rare in this country. Multiple witnesses also testified that employer gave a cash payment and a refrigerator full of food to an employee who was going through personal issues. The employer clearly does a lot of good things for their employees. This judge does not doubt that employer worked hard to try to accommodate claimant in certain respects such as childcare and tardiness due to such.

However, all these great things that employer and Mr. Brus have done do not excuse such frequent dressing down of employees and specifically the claimant. As stated it is fine to reprimand employees but it not fine to frequently scream at an employee, especially using profanity. It appears when Mr. Brus would scream at an employee, it would be for a prolonged period with sometimes personal issues brought up. Mr. Newberry stated that he once inadvertently recorded eighteen minutes of Mr. Brus screaming at the claimant. Over eighteen minutes is pretty excessive. It appears that Mr. Brus screaming at claimant was at least a weekly occurrence. The frequency and duration of this screaming is problematic. If being yelled at, even profanely, was more of an isolated experience, that may not be enough to establish good cause. However, the frequency and duration of this yelling moves the needle towards good cause.

Being publicly screamed at by your boss in a profane way on a weekly basis is intolerable, especially when it is in front of colleagues. Having your boss question the timing of your pregnancy is intolerable. Mr. Newberry testified that Mr. Brus so frequently screaming at him caused him not to be able to "think straight" by the end of his employment. Ms. Vogt likened the frequent screaming to being in an abusive relationship. Claimant testified that she felt constantly belittled. This all indicates this behavior is beyond the typical reprimand that bosses sometimes must impose. All this testimony makes clear that it is not claimant being overly sensitive with her

claims but instead being in a situation where Mr. Brus' actions were causing a detriment to her mental health. Detriment to mental health needs to be taken as seriously as physical detriment

Unique among my lawyer colleagues, this judge has actually worked construction. There is a difference between some unsavory language on a jobsite and such frequent and prolonged public dressing down of employees by a superior. To make matters worse, there did not appear to be anyone that employees could go to for redress. Mr. Brantner claimed that there was a grievance form available but no employee seemed aware of it. While Mr. Brus had an open door, employees felt like information disclosed to him may later be revealed to other employees or that he would complain about having to listen to such problems. It is also tough to report bad behavior by someone to that same person or his wife. During claimant's employment, there did not seem to be a HR representative who employees were directed to go to. It appears this issue may have since been remedied but employees at the time of claimant's employment were not clear to whom they could go for help. Employer noted that claimant could have gone to Shawn McDermott but claimant was never expressly told that would be her contact or at least a potential contact. Even Mr. McDermott, who is in a separate office, witnessed the yelling and swearing.

With all that said, this is still a close case because the line between dissatisfaction with work conditions and a detrimental and intolerable working condition contains shades of gray. Further, some of claimant's claims are not good cause attributable to the employer. For example, an employer is allowed to reprimand an employee for tardiness, even if caused by childcare issues. In addition, the subjective perception that Mr. Brus treated her unfairly is insufficient. In fact, it appears that employer gave her paid maternity leave, increased her compensation during COVID, and altered her working hours in an attempt to accommodate her. If anything, claimant may have actually received preferential treatment in some regards. All this makes an extremely close case.

However, Mr. Brus' frequent verbal profane lambasting of the claimant is problematic. As stated, this judge believes this conduct occurred as alleged because multiple other parties witnessed it and experienced it themselves. Had there not have been witnesses, there likely would have been insufficient evidence for this finding. However, the witnesses were credible describing the conduct, especially Mr. Newberry. As such, there is sufficient evidence to find the voluntary quit was for good cause.

Working in the construction industry is not an excuse to scream and yell at employees so often and at certain times personally. Similarly, compensating your employees well is also not an excuse to publicly scream at employees. In addition, just because claimant quit and submitted a letter of resignation, that is not an affirmative defense for the employer. She quit because her mental health was suffering due to the detrimental work environment present.

This judge has no doubt certain people, like Ms. Brantner, have had a positive experience working for employer. There is also no doubt that employer has done some very nice things for their employees. This decision does not make any blanket statement that employer is a bad place to work or Mr. Brus is a bad boss. However, this decision recognizes that when claimant quit, she did so because the working conditions were intolerable and detrimental to her mental health. As such, while this is a voluntary quit, there is good cause attributable to the employer and benefits should be allowed.

DECISION:

The January 8, 2021 unemployment insurance decision is REVERSED. Claimant is eligible to receive benefits.

Dated this 15th day of March, 2021.

Thomas J. Augustine
Administrative Law Judge

CC: Jessica Harris, claimant (by first class mail)
Brus Construction, employer (by first class mail)
Nicole Merrill, IWD (email)
Joni Benson, IWD (email)