

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PATRICIA SAYWAHN
Claimant

TPI IOWA LLC
Employer

APPEAL 21A-UI-07477-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/29/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant, Patricia Saywahn, filed an appeal from the March 1, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 24, 2021. The claimant participated personally and was represented by Stephen B. Saywahn. The employer, TPI Iowa LLC., was unavailable when called for the hearing. Former employees, Oritha Togba and Philip Gaye, testified for claimant. The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
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: The claimant was employed full-time as a floater and was separated from employment on October 16, 2020, when she quit the employment. Claimant was then discharged upon submitting her resignation.

Claimant worked as a “floater” which meant she moved from work station to work station, as needed. For several of the positions that claimant covered, the position required two to three people to handle the lifting of materials, which could be over 70 pounds. On multiple occasions, claimant raised concern to her manager, because she was left alone, and the weight/job duties were too great for a single person.

Claimant had raised concerns to her immediate supervisor, who dismissed her. He also routinely made derogatory comments about African immigrants, including that they were lazy. These comments were made to other employees as well. He would yell at the claimant and

when the claimant escalated her concerns about the unsafe working conditions, he threatened her that if she complained, he would get her fired.

Claimant decided to quit after she fell at the workplace because she could barely bend over. When claimant told her manager she needed help, he would not provide assistance. Claimant went over her manager to report her concern, who told the manager he needed to send someone to help her. Her manager said to her, "if you play with me, I will fire you."

Claimant did not want to quit the employment but after reporting her concerns repeatedly and trying to endure the physical pain of lifting and carrying products that required two or three people, she tendered her resignation. In her resignation, she requested to speak to the employer about concerns. The employer responded by accepting her resignation immediately and discharging her.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit 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.

The claimant has the burden of proof to establish she quit with good cause attributable to the employer, according to Iowa law. "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. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973).

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

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

subsequently fails to take effective action to address or resolve the problem it then has made the cause for quitting "attributable to the employer."

Claimant in this case presented credible evidence that she was repeatedly subjected to unsafe working conditions, having to carry and cover positions by herself, rather than two or three people, as the position required. Claimant raised concerns about her safety and requested help. Her manager refused to send other employees to help her, repeatedly made derogatory comments on the basis that she was an African immigrant, and threatened to get her fired if she complained. The claimant decided to tender her resignation after being injured at the workplace.

An employee has the right to work in a safe environment, and without derogatory, insensitive and hurtful comments. The conduct the claimant was subjected to was severe and recurring. An employee also has the right to expect that management when notified about such conduct will take reasonable steps to end the harassment. Under the facts of this case, a reasonable person would conclude that the working conditions the claimant was subjected to were intolerable and were not effectively remedied at the point the claimant resigned. Claimant has established she quit for good cause attributable to the employer. Benefits are allowed.

DECISION:

The unemployment insurance decision dated March 1, 2021, (reference 01) is REVERSED. The claimant quit the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.



Jennifer L. Beckman
Administrative Law Judge
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June 02, 2021
Decision Dated and Mailed

jlb/ol