

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIMOTHY L BATSON
Claimant

HEARTLAND AGRICULTURE LLC
Employer

APPEAL 18A-UI-01555-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/07/18
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 31, 2018, (reference 01) unemployment insurance decision that denied benefits based on his voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on February 28, 2018. The claimant participated and testified. The employer participated through Assistant Controller Thomas Ludwig. Claimant's Exhibits A and B were 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 service technician from December 12, 2011, until this employment ended on November 7, 2017, when he voluntarily quit.

On November 7, 2017, claimant informed the parts manager, Carl Anderson, that he was quitting effective immediately because he was "fed up" with the work environment. During the hearing claimant explained, since he was first hired by the employer, he had been subjected to ongoing harassment and inappropriate behavior from his coworkers, as well as being required to work in conditions he felt were unsafe. The claimant further testified, since the time he was first hired, his coworkers regularly referred to him as a pedophile, based on the fact that he wore a sweater and glasses one day. Claimant also provided images of several printouts and photographs that were posted in the work area meaning to mock or make fun of various employees. Included in those photographs is a printout someone posted that says, "Tim is gay." (Exhibit B). In regards to the unsafe working conditions claimant testified there were several areas of concern that he believed were likely OSHA violations. Claimant noted the basket used to perform overhead work was essentially a wooden crate, rather than a sturdier metal basket and power cords all over the work space had been improperly cut or tampered with in a manner that made them non-OSHA compliant.

Claimant testified he initially told the employer he was resigning effective immediately on September 27, 2017, but after speaking with a supervisor and having him assure him things would change; he agreed to return to work on October 2, 2017. Claimant testified after he returned to work the comments about him being a pedophile stopped, but the other issues remained. According to claimant his coworkers continued to mock him and the morning of November 7, 2017, moved around some papers he had spent a significant amount of time work on and organizing for inventory purposes. It was at this time that claimant again resigned.

Ludwig testified he was generally unaware of the allegations made by claimant, as he does not work on site and these issues were never brought to his attention by claimant or his supervisors. Claimant testified he repeatedly brought these issues to his supervisors, but nothing was done. Claimant further testified he did not report the issues beyond his supervisor, because he had heard the general response from the next level in the chain of command was if an employee did not like something they could quit. Ludwig acknowledged the items pictured in claimant's Exhibit B had been displayed in the workplace, but have been removed since he learned about them. Ludwig also confirmed the employer recently did a walk-through with its insurance company and several areas of concern/improvement were identified and have been remedied, though he could not speak to the specific safety concerns identified by claimant.

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(2) 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:

(2) The claimant left due to unsafe working conditions.

Iowa Admin. Code r. 871-24.26(3) 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.

Iowa Admin. Code r. 871-24.26(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.

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).

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.* Where multiple reasons for the quit, which are attributable to the employment, are presented the agency must "consider that all the reasons combined may constitute good cause for an employee to quit, if the reasons are attributable to the employer". *McCunn v. EAB*, 451 N.W.2d 510 (Iowa App. 1989)(citing *Taylor v. Iowa Department of Job Service*, 362 N.W.2d 534 (Iowa 1985)).

Here, claimant cited several reasons for leaving employment. These reasons centered on his claims of a hostile and unsafe work environment. Some of the behavior reported by claimant, while inappropriate and rude, does not necessarily amount to a hostile work environment as it is lacking in severity. However, other behavior, such as the printout in Exhibit B directly referring to claimant, is sufficiently severe to meet this standard and is possibly in violation of legal protections set out by the Iowa Civil Rights Act. Additionally, the claimant's claims about an unsafe work environment, which could not be rebutted by the employer, would also make the working conditions intolerable. While the final incident on November 7, 2017 by itself would likely not be constitute good cause for quitting attributable to the employer, that situation combined with the other incidents and reasons cited above created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment.

DECISION:

The January 31, 2018, (reference 01) unemployment insurance decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided he 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