IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

CHAD R WIREMAN Claimant **JOHN DEERE COMPANY** Employer	**APPEAL 15A-UI-06873-KC-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 09/28/14** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 4, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 20, 2015. The claimant participated. The employer did not participate.

ISSUE:

Was the claimant discharged for disqualifying, work-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Beginning October 8, 2007, the claimant was employed full-time as an assembler and was separated from employment on April 30, 2015. On April 21, 2015, the claimant talked to his supervisor, Aaron Ransom, about needing to take time off to take care of his father who had cancer. Ransom told the claimant that he had no time off available. The claimant asked about leave under the Family Medical Leave Act (FMLA). He understood from his supervisor that FMLA was not available to him to care for his father. The claimant did not work from April 21, 2015 through April 24, 2015. He called in sick each day of his absence from work. He called his employer about returning to work on April 27, 2015 and was informed that he was no longer employed. Tami Comegys, Human Resources Representative, terminated the claimant's employment due to his absence for three consecutive days. The claimant received written notice of his termination via certified mail. His termination was effective April 24, 2015. The claimant received the certified letter from the employer on May 1, 2015.

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 § 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(20) 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 § 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 § 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:
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> (20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

The 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).

Since the claimant had urgent business to attend to for fewer than ten days, and the employer would not grant a leave of absence, and the claimant returned to offer his services within ten days and no work was available, the separation was with good cause attributable to the employer.

DECISION:

The June 4, 2015, (reference 01) unemployment insurance decision is reversed. The 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.

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Kristin A. Collinson
Administrative Law Judge

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Decision Dated and Mailed

kac/pjs