IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

CHRISTOPHER M SANKS Claimant **DEERY BROTHERS INC** Employer	**APPEAL 17A-UI-09211-DG-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/13/17** **Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code 871-24.26(4) – Intolerable Work Conditions

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated August 28, 2017, (reference 01) that held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 26, 2017. Claimant participated. Employer participated by Terry Mertens, General Manager and was represented by Christopher Hunter, Employer's Unity Hearing Representative. Employer's Exhibits 1-3 and Claimant's Exhibits A-I were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on August 5, 2017. Claimant tendered his resignation to employer on August 5, 2017.

Claimant began working for employer on October 3, 2016 as a salesman. During his employment claimant was treated differently than his co-workers. Other employees and management made comments about his race, and his appearance. Co-workers talked to him using street slang, and made sarcastic comments about his race. Most of the time, claimant was the only African-American employee at the dealership.

In early June, 2017, claimant was approached by a manager and was told that he needed to submit to a drug screening. Claimant asked why he was being asked to submit to a drug test. He asked to see the employer's written methodology for selecting employees to test them for drugs. Employer refused to explain why claimant was being singled out for testing. Claimant was later told he was going to be fired for his attitude. The store manager Terry Mertens became aware of what had occurred, and intervened on claimant's behalf. Afterwards, claimant began hearing rumors that he was a drug addict, and co-workers made fun of him and suggested he was high. In response, claimant did submit to a drug screening on June 5, 2017.

The drug screening was negative for all substances. Claimant was still asked to undergo drug treatment because one of his managers believed claimant must be using cocaine or something.

On or about July 31, 2017, claimant was called into Kevin McHaffey's office. Kevin McHaffey was the store's finance manager. As claimant entered Mr. McHaffey's office he noticed that Mr. McHaffey had a firearm in his hand. Mr. McHaffey picked up the firearm and aimed it directly at claimant's chest. Claimant left the office immediately in shock. Claimant was a convicted felon and he knew he was not allowed to be near a firearm. Claimant was confused and alone and he did not know what to do.

In early August, 2017, claimant was told by his managers that he and the other salesmen needed to attend a mandatory training. Claimant arrived and sat down in a room with his co-workers. A manager began playing a video. The video was a satirical comedy depicting an uneducated African-American using street slang to sell cars. The actor in the video said, "if da transmission be slippin don't bring dat bitch back trippin". Claimant was extremely embarrassed, and he noticed that the actor in the video had similar physical features to him. The next few days after the incident, co-workers and management would quote the line from the video to claimant.

During that same time in early August, 2017, claimant noticed some writing on the monthly gross sales board. Claimant observed that his name was on the bottom of the list of salesmen. Near the bottom of the board someone wrote, "Bitches on the bottom". Claimant tried to ignore the implication and do his work. Toward the end of the day he decided he should erase the derogatory comment off the board. As he was erasing the inflammatory comment he was laughed at by co-workers and told, "Ahh, just leave it Chris….come on".

After being subjected to months of workplace racial discrimination and harassment, claimant could no longer tolerate the hostile work environment. He stopped coming into work on August 10, 2017.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because he was subjected to systemic invidious discrimination by 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. 871-24.26(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.

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.

Individuals who leave their employment due to disparate treatment are considered to have left work due to intolerable or detrimental working conditions and their leaving is deemed to be for good cause attributable to the employer. The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Dep't of Job Serv.*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Emp't Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

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 concluded that, because the intent-to-quit requirement was added to Iowa Admin. Code r. 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 left the employment because his work environment was intolerable, his separation from employment was for a good-cause reason attributable to the employer. Benefits are allowed.

DECISION:

The decision of the representative dated August 28, 207, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Duane L. Golden
Administrative Law Judge

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Decision Dated and Mailed

dlg/scn