IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 - EI

TERESA L BEAVER
Claimant

COMMUNITY CARE INC
Employer

APPEAL NO. 09A-UI-17641-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/04/09
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Leaving
871 IAC 24.26(4) – Intolerable Working Conditions

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 13, 2009 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on February 4, 2010. Claimant participated and was represented by Elizabeth Flansburg, Attorney at Law. Employer participated through Ginger Pingel, Sherrie Marshall, administrator Barb Adams, and Carol Wells. Laura Christianson observed.

ISSUE:

The issue is whether claimant voluntarily left the employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a CMA since March 1, 2008 and was separated from employment on September 27, 2009 when she quit due to harassment. (Employer's Exhibit 1, page 25) She had begun official employment under this management team on December 2, 2008 but had worked at the facility under different management for the previous 20 years. On February 26 and July 7, 2009 employer issued written warnings to claimant for failure to have completed all job duties but on May 26, warned her for working past her shift time on May 14, 2009, and on July 13, 2009 warned her for claiming overtime work in order to complete her job duties. (Employer's Exhibit 1, pages 8, 11, and 12) Her hours were changed from 6 a.m. to 2:30 p.m. as they had been since her hire to the evening shift beginning about a month before the separation. On September 25, 2009 Marshall gave her a write up alleging a false report that she gave milk of magnesia to a patient sooner than should have been done but at the time she did there was nothing written on the chart that it had been given in the past three days according to doctor's orders. It was only after claimant administered the dose and recorded it in the chart that Marshall wrote her initials in the chart for a dose given before that so that the dose given by claimant appeared to have been done too soon in violation of medical orders. Adams, who was the top of the business' hierarchy in the facility and in that

town, called her "stupid" and other names after she filed a civil rights complaint on September 16, 2009 and after she was written up again on September 16 and 25, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the 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.

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.

Generally notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, 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 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. Employment Appeal Bd.,* 710 N.W.2d 1 (Iowa 2005). Where claimant was required to work in two separate positions and received contradictory instructions from two different supervisors and quit after being reprimanded for his job performance was entitled to benefits. *McCunn v. EAB*, 451 N.W.2d 510 (Iowa App. 1989).

The warnings for failure to complete job duties contradicted by the warnings for working overtime to complete the job duties and name-calling created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The November 13, 2009 (reference 01) decision is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible. The benefits withheld shall be paid to claimant forthwith.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs