

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARTHA SMITH
Claimant

APPEAL NO: 17A-UI-06360-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IRWIN LOCKER & CATERING
Employer

OC: 06/04/17
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 20, 2017, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 6, 2017. The claimant participated in the hearing with witness, former meat wrapper Kelly Jons. Randy Sorenson, Owner, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time meat wrapper for Irwin Locker & Catering from February 8, 2008 to May 31, 2017. She voluntarily left her employment because the employer created a hostile work environment.

On May 31, 2017, the claimant and another employee had a disagreement about a spiral notebook used as a codebook where employees got the codes for the price of meat. The employer came over and threw the book on the ground and yelled that no one was doing what they were supposed to do. A customer called and the claimant answered the phone but the employer continued yelling and the claimant had to apologize to the customer. Meat wrapper Kelly Jons yelled back at the employer. The employer constantly yelled at employees and belittled them. Ms. Jons testified that on May 31, 2017, the employer was “riding the claimant horribly” and “constantly yelling at her.” One source of friction was the fact that the employer was often away from the shop so the employees did what they thought was necessary but when the employer returned he yelled that it was his “fucking business” and he “would do what (he) wanted” because employees “don’t know what to do.” Most of the employees were long-term employees and stayed out of loyalty to each other. The claimant quit briefly one year ago but did not want to let her co-workers down and when the employer apologized to the claimant and indicated he would work on his behavior she returned to work. After dealing with the employer’s

continued outbursts, yelling and swearing at the claimant and other employees, the claimant walked off the job after the employer yelled and swore at her May 31, 2017, voluntarily leaving her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her 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. 871-24.26(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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d 1 (Iowa 2005).

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 was 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). Those cases required 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).

In this case the employer routinely yelled and swore at the claimant and other employees and belittled other employees as well. The claimant and other employees felt that regardless of what they did in an effort to help the employer run the business, especially when he was not there to direct them, was never good enough for the employer and resulted in him yelling and swearing at them. The employer's behavior created intolerable working conditions for the claimant. She stayed as long as she could but finally could not take any further verbal abuse and walked out. Because she did not leave due to a work-related health condition, she was not required to give notice to the employer of her intent to quit. Under these circumstances, the administrative law judge concludes the claimant has met her burden of proving her leaving was for good cause attributable to the employer as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The June 20, 2017, reference 01, decision is reversed. The claimant voluntarily left her employment due to intolerable working conditions attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn