

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAURA L FOSTER
Claimant

SIMPLY ESSENTIALS LLC
Employer

APPEAL 19A-UI-00033-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/09/18
Claimant: Appellant (2)

Iowa Code §96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 27, 2018, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on January 17, 2019. Claimant participated and testified. Jackie Edwards appeared as a witness on behalf of the claimant. Employer did not participate.

ISSUE:

Did the claimant voluntarily quit with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 9, 2017. Claimant last worked as a full-time machine operator. Claimant was separated from employment on December 7, 2018, when she voluntarily quit.

On December 7, 2018, claimant was called in to a meeting with her immediate supervisor, Gabrielle Johnson, and his supervisor, Jeremy. Claimant was informed she was being suspended as disciplinary action for an incorrect order that was sent out. Claimant felt this disciplinary action was unfair, as neither of the two other individuals working on the order with her were suspended. Claimant felt she was being treated differently because she was female and the other two employees were male. This was not the first time claimant had felt she was being treated differently based on her sex and she complained to human resources about the disparate treatment on multiple occasions. Claimant testified she most recently complained approximately one week prior to her separation. Claimant then informed the two that she was resigning effective immediately.

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:

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:

(3) The claimant left due to unlawful working conditions.

...

(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).

Claimant resigned because she felt she was being discriminated against based on her sex when she was given a suspension on December 7, 2018 after an incorrect order was sent out. Claimant believed this was gender based discrimination because the two male employees working on the order with her were not suspended. Claimant had complained several times before to human resources that she felt she was being treated differently because she is a woman. Given that she was treated more harshly than two male employees who were also involved in the order being processed, claimant's belief that she was being discriminated against was reasonable. The disparate treatment of claimant compared to her male coworkers created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The December 27, 2018, (reference 01) unemployment insurance decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she 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