IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CASSANDRA A WESLEY
Claimant

CIGARETTE OUTLET INC
Employer

APPEAL NO. 11A-UI-16056-L

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/13/11
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 8, 2011 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held on February 7, 2012 in Cedar Rapids, Iowa. Claimant Cassandra Wesley participated. Employer Cigarette Outlet, Inc. (Outlet) participated through supervisors Debra Schnyder, Tony Gripp, and Jerry Gripp and managers Tony Schrobilgen and Melissa Fellendorf.

ISSUE:

Did the claimant voluntarily leave the employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Wesley was employed as a full-time store manager in Iowa City store #18 through November 10, 2011 when she quit. Wesley and clerk Kenji Jones were working alone when Schnyder arrived and confronted Wesley saying the store was a "disaster" and asked, "What, you can't manage your fucking employees?" Wesley responded they had been cleaning for a week and Schnyder responded there was "no fucking way" she would ever believe that and said, "Just because this store's in the ghetto doesn't mean it has to be fucking dirty." Wesley told her she could not "do this," handed over her key, and told Schnyder she had not made the deposit yet. She left and called Jerry Gripp crying and told him about what happened and that she should not have been treated like that. Gripp told her to wait and he would see if he could keep her in the job. They spoke several times in the next few days about various store issues. He told her she was a good employee but ended up not speaking to her further after Jones did not open the store on November 12. Wesley had called Gripp before about other issues with Schnyder, including using her vacation time for breast cancer surgery. Schnyder had scheduled Wesley to conduct inventory late the night before Wesley's surgery when she was supposed to rest and not drink or eat after 10:00 p.m. Wesley asked Schnyder what she should do if she became thirsty while working that late and Schnyder responded, giggling, "I suppose you'll have to swish and spit." Tony Gripp, owner Mike's son, had heard Schnyder swear in frustration. Schrobilgen and Fellendorf had been reprimanded calmly by Schnyder, but not until December 2011 after Wesley's separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Wesley voluntarily left the employment with good cause attributable to Outlet.

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.

A notice of an intent to quit had been 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. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871 IAC 24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871 IAC 24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871 IAC 24.26(6)(b) but not 871 IAC 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).

The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. EAB*, 462 N.W.2d 734 (Iowa App. 1990). Inasmuch as an employer can expect professional conduct and language from its employees, claimant is entitled to a working environment without being the target of abusive, obscene, name-calling. An employee should not have to endure bullying or a public dressing down with abusive language directed at them, either specifically or generally as part of a group, in order to retain employment any more than an employer would tolerate it from an employee.

Schnyder's reprimand behavior after Wesley's separation is not probative of her conduct towards Wesley a month or more earlier as her behavior may have modified in reaction to the separation. Wesley's recollection of the events on the separation date is credible. Schnyder's verbal abuse created an intolerable work environment for Wesley that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The December 8, 2011 (reference 01) decision is affirmed. Wesley voluntarily left her employment with good cause attributable to Outlet. Benefits are allowed, provided she is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs