

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELIZABETH A TICHY
Claimant

APPEAL NO: 17A-UI-12356-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CIMA CUTS INC
Employer

OC: 11/12/17
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 30, 2017, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on December 22, 2017. The claimant participated in the hearing with her daughter/witness Eliza Barkdoll and ex-husband/witness Scott Tichy. Carlos Arguello, Owner; Nicole Birks, Manager; and Melinda Arguello, Owner; participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her 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: The claimant was employed as a full-time store manager for Cima Cuts from October 25, 2016 to November 9, 2017. She voluntarily left her employment because she was dissatisfied with the work environment.

On November 9, 2017, the employer called the claimant and stated they needed to have a one on one meeting November 10, 2017, at the hair salon. The claimant wanted to do it by phone instead and the employer told her the meeting would be held in the salon. She then texted him she was going to meet her daughter at a local coffee house and asked if they could meet there with her daughter present. The employer reiterated that the meeting would be held at the store, privately between the two of them. The claimant asked several times to have the discussion by phone and the employer repeated the meeting would be in the shop. The claimant then said she was going to bring her daughter to the store for the meeting and the employer said no. The claimant asked if she was in trouble. The employer wanted to discuss staffing and sales and operations issues and stated the claimant was not "in trouble." The claimant called 30 minutes later and said she could no longer "take it" and could not work there any longer. The employer accepted the claimant's resignation.

The claimant had a conflict with one of the stylists who also complained about the claimant. She was upset because the employer did not allow her to issue the stylist a written warning after

the stylist refused to do something outside the scope of her job and hung up on the claimant. The claimant then told the employer the stylist was harassing her. The claimant, who is thin, said the stylist told her to “eat a sandwich” in response to something the claimant said to her that she did not like and the claimant was upset by the comment. The employer told the claimant he would investigate the situation and asked the claimant if she had any witnesses. The claimant answered affirmatively and named some of the other stylists. The employer spoke to the stylists, none of whom heard the comment about the sandwich, and issued the stylist whom the claimant named as harassing her, a written warning.

The claimant was also upset because she had problems with the computer and when she asked the employer questions about the computer he sometimes referred to it as “Libby language.”

The claimant testified that some of the stylist went to a local restaurant for a meeting and one of them told the claimant some of the others talked about her. The claimant was extremely upset to learn that.

Prior to voluntarily leaving her employment, the claimant never told the employer she felt the work environment was hostile.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

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). “Good cause” for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Florida App. 1973). 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 (Iowa 2005).

The claimant cited three situations she felt created a hostile work environment. The first occurred when the employer labeled her attempts to explain computer issues as “Libby language.” While the claimant was highly offended, the evidence does not show the employer was angry or upset when he made the comments but instead it appears he made an attempt at

humor that the claimant did not find amusing. There is no evidence that he intended to hurt her feelings or embarrass her by making that comment.

The second situation involved one of the stylists telling the claimant to "eat a sandwich." The claimant was very offended by the snide remark but did not tell the employer about the incident at the time it occurred. While the statement was inappropriate, it hardly rises to the level of creating intolerable or detrimental working conditions.

The third situation involved several employees going to an offsite meeting and making comments about the claimant in the car among themselves. When the claimant learned of the remarks she appears to have been stunned and appalled that subordinates would talk about their manager when they were together and out of earshot of the manager. Rather than recognizing that it is a common occurrence, if not human nature, the claimant was outraged and this incident contributed to her decision to leave her employment.

The claimant did not quit following any of those incidents, however. The event that prompted her to voluntarily quit her job occurred November 9, 2017, when the employer told the claimant he wanted to meet with her one on one at the shop the following day. The claimant made several attempts to have the employer conduct the meeting over the phone and when he would not agree to that she proposed they meet at a coffee shop where her daughter would be present and when he would not agree to that she called the employer back and voluntarily quit her job. The employer wanted to meet with her to discuss staffing, sales and operations issues and told her she was not in trouble after she repeatedly asked if she was. The employer's decision to meet at the shop, without the claimant's daughter present, who did not work for the shop and had no legitimate reason to attend any such meeting, was a reasonable one and the claimant's refusal to attend was rather insubordinate. When the employer did not give in to her demands regarding the meeting, the claimant quit her job.

Under the above-stated circumstances, the administrative law judge must conclude the claimant has not demonstrated a hostile work environment or that she left her employment due to unlawful, intolerable or detrimental reasons as those terms are described by Iowa law. Therefore, benefits must be denied.

DECISION:

The November 30, 2017, reference 01, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn