IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

DAVID J LOTT Claimant **LYMAN RICHEY CORP** Employer	**APPEAL 16A-UI-09430-LJ-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 07/31/16** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.26(4) – Intolerable Work Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 18, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant his employment voluntarily and without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on September 15, 2016. The claimant, David J. Lott, participated. The employer, Lyman Richey Corporation, did not register a telephone number at which to be reached and did not participate in the hearing.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a truck driver, from July 1, 2013, until August 3, 2016, when he quit effective immediately due to the hostile work environment.

Claimant told the plant superintendent, John Stevey, that he was quitting. The final incident occurred when Stevey called claimant into the office and told claimant he needed to do a better job of cleaning his truck. Prior to that, claimant had been doing everything he was required to do for cleaning the truck. Claimant tried to explain what he had been doing, and Stevey told claimant he was "full of bullshit" and was lying to him. Stevey said if claimant did not get his "shit" together, he would be discharged. Claimant felt his job was in jeopardy, given Stevey's comment to him during that conversation. Based on experiences of other employees, claimant believes that if he reported this to HR, Stevey would retaliate against him.

Claimant's work environment was also filled with sexual innuendo and harassment. This was a daily occurrence. Stevey made several inappropriate comments in the break room to all the drivers just before Christmas. Stevey's wife had made a carrot cake, and when asked what flavor it was, Stevey said, "Cock." A week or so before claimant quit, Stevey walked out of his office with a bratwurst in his hand, put it between his legs, shook the bratwurst, and asked one

of the drivers if he wanted some. Additionally, there were constantly rumors circulating that claimant was homosexual and his coworkers called him "gay" on a regular basis. Claimant had experienced similar sexual harassment early in his employment, and HR just advised him not to talk to the harasser.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation was with good cause attributable to the employer. Benefits are allowed.

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.

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).

]"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. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. 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.

Claimant credibly testified that on his final day of work, the plant superintendent swore at him multiple times. The average employee in claimant's situation would feel similarly compelled to abandon employment after such an interaction. Claimant has established good cause to leave his employment attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The August 18, 2016, (reference 01) unemployment insurance decision is reversed. Claimant quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

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Elizabeth A. Johnson
Administrative Law Judge

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Decision Dated and Mailed

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