

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CRISTINA I TERRONEZ
Claimant

ELEVATE PROPERTY MANAGEMENT LLC
Employer

APPEAL NO. 15R-UI-08902-DGT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/12/15
Claimant: Appellant (2)**

Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 28, 2015, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 11, 2015. Claimant participated, and was represented by counsel Andy LeGrant. Employer participated by Michele Wagman, Human Resources Manager. Claimant's Exhibit A was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 2, 2015. Claimant quit as a result of a number of incidents which caused claimant to suffer from work-related stress.

Claimant was given a sexually inappropriate comment by a resident. This was not addressed by management, but did not occur more than the one time. A second incident or group of incidents occurred with painters of the apartment building. Painters made inappropriate comments to claimant, on multiple occasions. After claimant notified her manager the first time, there was nothing done. When additional comments were made to claimant, claimant again told her manager, and her manager called the people who ran the painting company. Manager explained that this could not occur again.

The major occurrence which led to the quit was when claimant walked into a private office to find her manager kissing a subordinate worker for the apartment building. The manager did nothing to address the situation with claimant. Claimant was immediately confronted by the man involved in the kissing episode. He told her that it was none of her business as he admitted to the action she had witnessed.

The rest of the week things were different at work, and claimant's manager did not address the situation. She did not mention that she had been kissing a married man who she managed.

She did not talk with the claimant about much of anything. The environment had changed from how it had been for years.

Claimant attempted to call human resources about the incident she had witnessed. The human resources officer was on vacation, but did not reference the vacation on her voice message or through any emails sent to employees. Claimant tried on at least six occasions to be in touch with human resources during the next three days, but no calls were returned. Claimant then went to her local manager (who had been involved in the incident) and explained that she was going to quit. The manager did not explore the reasons for quitting at all, and simply gave claimant papers to fill out. Claimant filled out the papers and returned them the next day. No one with employer attempted to dissuade claimant from quitting, or even tried to find out the reasons behind the quit.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because her work environment had become intolerable.

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. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Where a claim gives numerous reasons for leaving employment Iowa Workforce is required to consider all stated reasons which might combine to give the claimant good cause to quit in determining any of those reasons constitute good cause attributable to the employer. Taylor v. Iowa Department of Job Service, 362 N.W.2d 534 (Iowa 1985). Individuals who leave their employment due to disparate treatment are considered to have left work due to intolerable or detrimental working conditions and their leaving is deemed to be for good cause attributable to the employer. The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Dep't of Job Serv., 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Emp't Appeal Bd., 494 N.W.2d 660 (Iowa 1993).

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 Iowa Admin. Code r. 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 administrative law judge finds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because she had accidentally witnessed an incident of marital infidelity involving a maintenance worker and his superior. Claimant was unable to discuss the incident with anyone, and her manager was suddenly and noticeably more quiet to claimant after the incident.

The claimant's testimony is far more credible than employer's. The manager's actions after the incident indicate that she was viewing her relationship with claimant differently, and treating her in a different manner. All of these actions tend to support claimant's version of the incident. Claimant reasonably believed that her situation was being ignored by human resources as she had not been informed that the human resources officer was on vacation, and she should take her complaints to another party. Additionally, in a very small office, claimant had been given a cold shoulder by her manager for reasons that had nothing to do with any action on the part of the claimant.

DECISION:

The decision of the representative dated April 28, 2015, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/css