

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BENJAMIN WHITMORE

Claimant

APPEAL NO: 16A-UI-11002-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH EDUCATION WEST LLC

Employer

OC: 05/15/16

Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 4, 2016, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on October 26, 2016. The claimant participated in the hearing. The employer provided a phone number prior to the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the claimant voluntarily left his employment for 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 senior cook for SDH Education West from August 24, 2011 to September 9, 2016. He voluntarily quit his job due to intolerable working conditions.

On August 29, 2016, the claimant was in the kitchen with two other cooks. During the course of the evening, cook Scott repeatedly gave the claimant a "hard time" about not having enough pasta done. They served between 650 and 700 customers buffet style that evening and the claimant was working as fast as he could. At the end of the night the claimant went to the office door of General Manager Ned Price to check out. As the claimant was standing in Mr. Price's office doorway, Scott came up behind him and tried to push him into the office. The claimant asked Mr. Price if he saw Scott push him and before Mr. Price could respond Scott said, "It's because you have such a fat ass. You need to get your fat ass out of the way." Mr. Price told Scott to stop and Scott replied, "If he didn't have such a fat ass there wouldn't be a problem." Mr. Price got up from his desk and brought Scott into the office and closed the door. Scott pushed the claimant into the outer office before entering Mr. Price's office. The claimant contacted the employer's hotline to file a complaint about Scott. They forwarded his complaint to the district human resource manager and Mr. Price.

On August 30, 2016, the claimant went to take a drink from his protein shaker bottle and discovered someone had spit in his drink. There was a “sizeable green chunk of snot and saliva” in his glass. The claimant vomited and then finished his shift. The following day the claimant told Mr. Price someone spit in his drink and Mr. Price said he did not see anyone do so but he “could probably guess who it was.” Mr. Price also told the claimant he was going to be gone September 1, 2016, and he did not know what would happen when he was gone. After hearing that, the claimant was scared to go to work and consequently called in sick September 1, 2016. He was not scheduled to work September 2, 3 or 4, 2016, and returned to work September 5, 2016. The claimant did not hear anything about his complaint to human resources and was afraid Scott’s behavior was escalating. He did not know what Scott was capable of and was scared to work when Mr. Price was not there. On September 8, 2016, the claimant resigned his position with the employer.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant voluntarily left his employment with good cause attributable to the employer.

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.

The law presumes a claimant has left employment with good cause when he quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that he intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. *Hy-Vee, Inc. v. Employment Appeal Board and Diyonda L. Avant*, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005).

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). 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 not only notified Mr. Price of his concerns, Mr. Price personally observed some of Scott's behavior toward the claimant. Scott pushed the claimant repeatedly and called him a "fat ass." The following day the claimant discovered someone had spit in his drink and it appears more likely than not that Scott was the culprit. The claimant notified the employer of Scott's behavior and feared going to work and subsequently quit due to that situation. Under these circumstances, the administrative law judge must conclude the claimant voluntarily left his employment for good cause attributable to the employer. Therefore, benefits are allowed.

DECISION:

The representative's decision dated October 4, 2016, reference 01, is reversed. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs