

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TIFFANY J LEWIS
Claimant

G & M CEDAR RAPIDS #3 INC
Employer

APPEAL 19A-UI-05482-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/16/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 3, 2019, (reference 01) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 2, 2019. Claimant participated. Employer participated by Nicholas Warson, Area Manager.

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 June 13, 2019. Claimant quit work on that date because her employment had become intolerable.

Claimant began working for employer as a part-time sampler/driver on May 23, 2016. In the latter part of 2018, and during the spring months of 2019 claimant's manager, Sara began engaging in harassing behaviors toward claimant. Sara would ask claimant questions about using methamphetamine in front of co-workers, and she told co-workers that claimant had tested positive for drugs. In March, 2019 Sara called claimant a "fucking bitch".

In April, 2019 the area manager met with claimant and Sara. The area manager had not observed the harassing behaviors, and he attempted to stop any inappropriate workplace harassment. He told Sara to cool it if she was engaging in workplace harassment.

The harassing behaviors toward claimant continued into May and June of 2019. Sara continued making comments about claimant's drug use, and claimant felt very hated and unsafe at work. The area manager was nice, and when he was around Sara did not engage in the behaviors. The area manager met with Sara and claimant again on May 22, 2019. During that meeting Sara denied engaging in any harassing behaviors, and claimant was not sure what she should do after the meeting.

On June 13, 2019 claimant was working in a storage area. Claimant noticed that Sara or someone had written, "use this last or I'll cut you". Claimant was already feeling worried and anxious at work. The message which threatened bodily harm was more than she could endure. Claimant left the store at that time, and she later sent in a letter of resignation to the area manger by e-mail. Claimant did not return to work after that date.

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 was intolerable.

Iowa Code section 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.

Iowa Admin. Code r. 871-24.26(3) 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:

(3) The claimant left due to unlawful working conditions.

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 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).

Claimant's left the employment because her work environment was intolerable, her separation from employment was for a good-cause reason attributable to the employer. Benefits are allowed.

DECISION:

The decision of the representative dated July 3, 2019, 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/scn