

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DOUG A FLYNN
Claimant

APPEAL NO. 18A-UI-11303-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SSB MANUFACTURING COMPANY
Employer

OC: 10/28/18
Claimant: Respondent (1)

Section 96.5-1 - Voluntary Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

SSB Manufacturing Company (employer) appealed a representative's November 14, 2018, decision (reference 01) that concluded Doug Flynn (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 5, 2018. The claimant participated personally. The employer participated by Rhonda Krause, Human Resources Manager; Jeff Baker, Jr., Production Manager; and Tom Markulec, Production Supervisor. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 5, 1996, as a full-time foundation upholstery/nail down person. The claimant signed for receipt of the employer's handbook annually. The employer has a policy to "not promote a hostile work environment".

The claimant and his co-workers lodged multiple complaints about the production supervisor (PS), Tom Markulec. The production manager counseled the PS and he thought his behavior had improved over the three years he was employed. The claimant complained that the PS called him ageist names, used profanity, and used him to target employees for termination. Once when the claimant asked the PS why his vacation was denied, the PS said, "Because I can". The PS yelled at the claimant, "Do you know who I am?" Sometimes the PS would apologize for his behavior. The PS had been sent home for yelling at his managers. A woman from human resources implied things were going on behind closed doors with the PS.

On October 11, 2018, a co-worker working about ten feet from the claimant asked the PS about hoses that were hanging from the ceiling in the work area. The co-worker had one hose around his neck. The PS said maintenance would remove them. The claimant pointed to the hoses

above his head and the PS approached his area. The claimant felt uncomfortable with how close the PS put his face to his. He kept his face at the uncomfortable distance when he talked to the claimant. The PS remembers telling the claimant that he was not maintenance but he would see if they could remove them sooner. The claimant remembers the PS yelling three times, "Do I look like a fucking mechanic?" After the PS walked away, the claimant was shaken and afraid by the interaction.

He went to his production manager and gave a two-week notice of his resignation. His last day would be October 26, 2018. The claimant was so upset he could not speak with the production manager. The production manager offered to let him go home and think about it but the claimant continued to work. The production manager mentioned the complaint to the PS. After October 11, 2018, the PS stopped interacting with the claimant.

The production manager performed an investigation by interviewing four employees who were not physically close to the interaction and subordinates of the PS. The employer did not interview the claimant, the PS, or an employee who was standing within five feet of the communication. The production manager asked to talk to the claimant but the claimant did not know it was in connection with the investigation. The claimant declined the conversation because he was upset.

On October 25, 2018, the human resources manager asked the claimant to sign a resignation document. He chose not to honor the employer's wishes by signing the document because the employer did not help him with his hostile work environment. The request and the continued lack of communication by a supervisor upset him. He walked off the job on October 25, 2018.

The claimant filed for unemployment insurance benefits with an effective date of October 28, 2018. The employer provided the name and number of Rhonda Krause as the person who would participate in the fact-finding interview on November 13, 2018. The fact finder called Ms. Krause but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. She did not respond to the message or provide documents for the fact finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant voluntarily quit work with good cause attributable to the employer.

Iowa Code section 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.

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). 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). The claimant notified the employer of the production supervisor's behavior. The employer knew that other employees had been complaining for three years. The final incident was when the production supervisor stopped talking to the claimant for almost two weeks. The claimant subsequently quit due to the conditions the production supervisor created. The claimant is eligible to receive unemployment insurance benefits, provided he meets all the qualifications.

DECISION:

The representative's November 14, 2018, decision (reference 01) is affirmed. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs