

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ALEXIS M MARTINEZ**

Claimant

**APPEAL 21A-UI-12076-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEYS MARKETING COMPANY**

Employer

**OC: 01/24/21**

**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 23, 2021, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on July 22, 2021. Claimant Alexis M. Martinez participated and testified. Employer Casey's Marketing Company participated through store manager Josh Major. Claimant's Exhibits A and B were received.

**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 as a team member from February 24, 2020, until January 22, 2021, when she quit.

Beginning in April 2020, claimant's co-worker began yelling at her and swearing at her. On the first occasion, the co-worker became upset because claimant would not perform the co-worker's job duties. She called claimant names such as "b\*\*ch" and "c\*\*t." Claimant contacted the travelling manager and the area supervisor to complain, but they both told her there was nothing that could be done.

In June or July 2020, the same co-worker yelled at claimant, telling her how to perform her job and calling her the same names she used in the April 2020 incident. Claimant immediately complained to her then-supervisor about the incident because she was upset by it. Her supervisor spoke to the co-worker about the conduct. Another incident occurred in November 2020 when Mr. Major asked claimant to complete her co-worker's duties. The co-worker yelled and swore at claimant again, and claimant complained to Mr. Major. Mr. Major spoke to the co-worker and told her the behavior was inappropriate and needed to stop.

The last straw for claimant occurred on January 22, 2021. Claimant asked the co-worker about an order and she replied, "I thought you knew how to read, b\*\*ch." Claimant told the co-worker

to shut up and went into the walk-in cooler. The co-worker followed claimant and shoved claimant. When claimant told her not to touch her, the co-worker said, "Show me how tough you are." Claimant left the cooler and complained to Mr. Major about the verbal and physical incident. Claimant decided she could not continue working in that type of environment where she was concerned for her safety so she left without telling Mr. Major. Claimant told another co-worker that she was quitting.

Upon leaving, the co-worker sent claimant harassing messages. (Claimant's Exhibit A) Claimant contacted the area supervisor to explain what happened. She forwarded the messages onto the area supervisor. (Claimant's Exhibit B)

### **REASONING AND CONCLUSIONS OF LAW:**

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

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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

The 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). The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

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.

Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa

Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, 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. The Iowa Supreme Court concluded that, because the intent-to-quit requirement was added to 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. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

“Good cause attributable to the employer” does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)(“[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith”); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer “free from fault”); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)(“The good cause attributable to the employer need not be based upon a fault or wrong of such employer.”). Good cause may be attributable to “the employment itself” rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788. Therefore, claimant was not required to give the employer any notice with regard to the intolerable or detrimental working conditions prior to his quitting. However, she must prove that his working conditions were intolerable, detrimental, or unsafe.

It is reasonable to the average person that an employee should not have to work in an environment where she is verbally abused by a co-worker and subjected to profane language, especially after making complaints to management after each incident. Claimant has proven that her working conditions were intolerable and detrimental. Thus, the separation was with good cause attributable to the employer. As such, benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The April 23, 2021, (reference 01) unemployment insurance decision is reversed. Claimant voluntarily quit for good cause attributable to employer. Benefits are allowed provided she is otherwise eligible.



---

Stephanie Adkisson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

---

July 29, 2021  
Decision Dated and Mailed

sa/ol