

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERICA L MADISON
Claimant

IOWA PREMIUM LLC
Employer

APPEAL 17A-UI-06342-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/28/17
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the June 19, 2017 (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant quit due to detrimental working conditions. The parties were properly notified of the hearing. A telephone hearing was held on July 6, 2017. The claimant, Erica L. Madison, participated, and witness Patrick Charles also testified on claimant's behalf. The employer, Iowa Premium, L.L.C., participated through Brenda Betancourth, Benefits Coordinator; and Cara Spencer, Hiring Coordinator.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a Butcher, from September 1, 2016, until May 26, 2017, when she quit. Claimant last reported to work on May 26, the Friday before Memorial Day weekend. The employer was short-staffed, as a number of people had called off, and the lines were running too fast for claimant to keep up with the workload. Claimant explained that the other people who normally perform the same job that she does had called off that day, and the only person helping her was a new employee who did not understand the job. Claimant went to her supervisor, Johnny, to ask for assistance on her line. Johnny found an employee to come help on claimant's line, but claimant and this employee had a history of disagreements at work. Initially, this coworker said it was not her job to help claimant. Johnny let the coworker go on break and had claimant stay on the line to clean up a mess. He told claimant that when the coworker returned from break, claimant could go on break and the coworker would take over in her position. When the coworker returned from break, claimant attempted to hand over the work to her. Claimant's coworker got angry, began screaming and pointing in claimant's face,

and had a knife in her hand. Claimant testified that she felt threatened by her coworker's behavior.

Claimant reported this incident to her supervisor, and the supervisor said he would take the coworker up to the supervisor's office and talk to her. This also upset claimant, as she felt the coworker should have been taken to Human Resources. She indicated that being taken to the supervisor's office meant nothing would be done to her. Claimant decided she wanted to report these issues to Jeffrey, who she identifies as "The Boss." Multiple supervisors told claimant that if she left the production floor to go and talk to Jeffrey, she would be discharged. Claimant felt she needed to talk to Jeffrey because she had been threatened and she was upset. As she was washing her equipment before leaving the floor, yet another supervisor told her that if she left the production floor, she would be fired. Claimant still decided to leave. She and her husband, coworker Patrick Charles, went to the office to meet with Jeffrey and Steve, who reports to Jeffrey. She began telling Jeffrey and Steve why she was upset when Steve interrupted that he was tired of "you people" causing problems and bringing down the plant. He got upset with claimant and accused her of always coming into the office and complaining about things. Claimant was in tears and was offended by Steve's comment, so she quit. She does not believe continued work was available for her, had she not quit her job.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,946.00, since filing a claim with an effective date of May 28, 2017, each week until the week ending July 1, 2017. Claimant's gross weekly benefit amount is \$506.00, and she has reported some income each week that she has filed for benefits. The administrative record also establishes that the employer did not participate in the fact-finding interview. In its appeal letter, the employer stated that the day of the fact-finding interview was busy and everyone was out of the office, so no one participated.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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). 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 rule 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds claimant credibly testified regarding the events of May 26, 2017.

Here, claimant testified that she quit after a coworker angrily confronted her while holding a knife, multiple supervisors told her that she would be discharged if she left the production floor to report her issue with the coworker, and one of the bosses refused to listen to her grievance and used language that is commonly understood to be racially coded. Any one of these issues on its own could reasonably be indicative of a hostile work environment. Collectively, these three incidents establish sufficiently intolerable working conditions to justify claimant ending her employment. Benefits are allowed. As claimant's separation is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The June 19, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant quit the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed
lj/scn