

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**ASHLEY E SMITH**

Claimant

**CELLCO PARTNERSHIP**

Employer

**APPEAL 17A-UI-06921-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/18/17**

**Claimant: Appellant (2)**

---

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 6, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 24, 2017. Claimant participated. Jacob Kircher participated on claimant's behalf. Employer did not register for the hearing and did not participate in the hearing.

**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 solutions specialist from January 5, 2015, and was separated from employment on June 16, 2017, when she quit.

The employer has a written policy that prohibits discrimination. On June 16, 2017, claimant came to the employer and told a supervisor she was resigning effective immediately. The supervisor accepted claimant's resignation. Claimant also sent an e-mail to the human resources department and the area sales director informing them she was resigning effective immediately. In her e-mail, claimant stated she was resigning due to unfair treatment, bigotry, and for not receiving enough support from the employer. The employer did not respond to claimant regarding her e-mail.

Prior to her resignation, employees would call claimant "Shanequa" or by other names instead of calling claimant by her name. Claimant was offended and upset at being called by other names. The employees had been calling claimant by other names for approximately a year. Mr. Kircher testified he heard employees call claimant by names that were not her own. The last time claimant was called by another name was approximately a week before she resigned. Claimant reported this to her manager and to the human resources department. Claimant told the employer she was offended. The employer told claimant it would talk to the employees, but

the employees would continue to call her by other names (e.g., “Shanequa”). Mr. Kircher testified he is not aware of the employees being disciplined.

On one occasion during claimant’s employment, a manager told claimant not to be an “angry black b\*\*ch.” The manager said this to claimant approximately thirty days before she quit. Claimant reported this incident to the employer and was told they would discuss it with the manager. On multiple other occasions, this same manager told her not to be the “angry black woman.” Claimant also reported these incidents to the employer, but nothing changed. Mr. Kircher also heard a manager refer to claimant as an “angry black b\*\*ch” or “angry black woman” on multiple occasions. Mr. Kircher testified he does not believe the manager was ever disciplined.

Claimant contacted human resources twice a month and her direct managers every day about how she was being treated at the employer. The employer would tell claimant they were looking into it, but nothing would change.

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

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed.

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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

During her employment, up to and including her last two weeks of employment, employees continually referred to claimant as “Shanequa” or by some other name that was not hers.

Claimant was offended by the treatment she received at the employer and she reported this to the employer, but the employees did not stop. Furthermore, claimant and Mr. Kircher credibly testified a manager referred to her as an “angry black b\*\*ch” and an “angry black woman.”

“The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made.” *Myers v. Emp’t Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). Inasmuch as an employer can expect professional conduct and language from its employees, claimant is entitled to a working environment without being the target of abusive, obscene, name-calling. An employee should not have to endure bullying or name calling with abusive/offensive language directed at them, either specifically or generally as part of a group, in order to retain employment any more than an employer would tolerate it from an employee.

The employer’s employees’ offensive language towards claimant created an intolerable work environment for her that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

**DECISION:**

The July 6, 2017, (reference 01) unemployment insurance decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

---

Jeremy Peterson  
Administrative Law Judge

---

Decision Dated and Mailed

jp/rvs