

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAMEETTA F GARNER
Claimant

APPEAL NO. 08A-UI-10406-L

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**OC: 09/28/08 R: 02
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Leaving
871 IAC 24.26(4) – Intolerable Working Conditions

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 27, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 25, 2008 in Des Moines, Iowa. Claimant participated. Employer participated through Bill Tiernan, deli manager, and was represented by Barbara Frazier Lehl of Unemployment Insurance Services.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time deli worker from July 2007 through February 13, 2008 when she quit. Claimant had ongoing concerns about coworker Frances Hale who bumped and jostled her in spite of knowing of the rheumatoid arthritis in her neck and the pain that caused her and threw pieces of cheese past her while she was trying to work. Dot often raised her voice at claimant in front of customers and did not know how to do her job so claimant would frequently do her work for her in addition to her own. Hale and Dot (Dorothy) also made false complaints (such as claimant conducting personal shopping while working when she was assisting her daughter who was a customer shopping for ingredients for a recipe) to supervisor and deli manager Bill Tiernan who then confronted claimant frequently. In mid-January 2008 Tiernan, claimant, Les Bruner, human resources manager; and Hale met to discuss claimant's concerns but Bruner spoke more about claimant's attendance issues and her shirt than Hale's maltreatment of claimant. Tiernan tried to schedule claimant and Hale separately but they were often on overlapping shifts in a department that is 25 feet in length and many times Tiernan was not present when they were working together. The conditions did not change significantly after the meeting and claimant continued to report her concerns to Tiernan, who did not document her specific complaints or their discussions. She did not quit because of not being promoted to a kitchen job and was happy with Hy-Vee as an employer, her job and pay but she was

experiencing stress and physical pain while working with Hale and Dot and quit without giving notice to employer. Employer did not conduct an exit interview.

REASONING AND CONCLUSIONS OF LAW:

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

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.

871 IAC 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. Our supreme court recently 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).

The employer's failure to stop Hale's and Dot's known physical and verbal abuse of claimant created an intolerable work environment for her and that gave rise to good cause reasons for leaving the employment. Benefits are allowed.

DECISION:

The October 27, 2008, reference 01, decision is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the

claimant is otherwise eligible. The benefits withheld effective the week ending October 4, 2008 shall be paid to claimant forthwith.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs