

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MELISSA D CALIGER**  
Claimant

**MIRACLE MUSCATINE INC**  
Employer

**APPEAL 17A-UI-04227-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/19/17**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 6, 2017, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on May 9, 2017. The claimant participated and was represented by attorney Kelsey Marquard. The employer participated through owners Mike and Tanya Pothoff and witnesses Jim Ruckles and Kathy Estabrook. Claimant's Exhibits A through N and employer's Exhibits 1 and 2 were received into evidence.

**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 an office manager from November 6, 2012, until this employment ended on March 21, 2017, when she voluntarily quit.

On March 21, 2017, claimant informed Tanya Pothoff she was quitting and turned in her keys. Claimant's decision was based on an incident that occurred earlier that day with Mike Pothoff, where claimant felt she was being asked to do something illegal. Earlier in the day, Mike Pothoff had sent claimant a text message informing her that another employee, his step-daughter, was going to be late to work. Mike Pothoff instructed claimant to discipline the employee by writing her up and withholding her tip money. (Exhibit A). Claimant testified this was not the first time she had been instructed to withhold money earned by employees as punishment. Claimant had also been previously instructed by Mike Pothoff to clock employees out if they were observed using their cell phones during work hours. Claimant determined she could no longer work in such an environment and quit.

Prior to quitting, claimant had been discussing the possibility with the employer that she would be moving out of state when her daughter graduated in May, depending on where her daughter

chose to go to college. However, no final plans had been made and claimant had not given a formal resignation prior to March 21.

### **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.

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(3) 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:

(3) The claimant left due to unlawful working conditions.

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).

The employer had given claimant a directive to withhold tips earned from an employee as a form of discipline. Claimant was reasonable to believe that this directive would cause her to violate the law and this was not the first time she had been asked to do something of this nature. The employer's directive created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment.

**DECISION:**

The April 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 she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/scn