IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

JASON R HALL Claimant **PARCO LTD** Employer	**APPEAL 20A-UI-00483-DB-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/12/19** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the January 10, 2020 (reference 05) unemployment insurance decision that held claimant ineligible for unemployment insurance benefits due to his voluntarily quitting of work. The parties were properly notified about the hearing. A telephone hearing was held on February 4, 2020. Claimant, Jason R. Hall, participated personally. Employer, Parco Ltd, participated through witness Juliet Diaz. Claimant's Exhibits A through C were admitted. Employer's Exhibit 1 was admitted.

ISSUE:

Did claimant voluntarily quit his 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 part-time, but working full-time hours, as a cook at the employer's fast food restaurant. He began working for this employer on August 27, 2019 and voluntarily quit on December 19, 2019 by tendering a written resignation. Claimant's job duties consisted of preparing food, stocking, customer service, and cleaning at the restaurant. Claimant's immediate supervisor was Kavona McDaniels but he also had a shift manager named Jonathan Bruns. Diane Kelley was the district manager.

During his time at the restaurant, the claimant witnessed the managers fail to properly stock the meat in the freezer so that the older meat would be used first. He witnessed managers fail to mark expiration dates on meat so that the cooks knew that the meat they were cooking was not expired. He witnessed people who were not employees being allowed to come behind the counter to cook food using the employer's kitchen equipment. He witnessed managers using personal cell phones for personal use while on the clock. He witnessed managers smoking marijuana outside of the building.

He took pictures and video of the food and non-employees behind the counter at the store and sent the images to Ms. Kelley, telling her about his concerns. He did this pursuant to the

employer's occupational safety and food safety policies. See Exhibit B. She immediately asked how he got her number and was told this was not his concern.

On November 7, 2019, claimant was terminated by a manager for taking unauthorized pictures and video on company property. See Exhibit A. On November 8, 2019, Ms. Kelley contacted him and said that he was not actually terminated because the manager that completed the termination paperwork did not have authority to terminate employees and the photos he was taking were to report the problems he was having with the store managers. He was allowed to come back to work on November 8, 2019.

On December 10, 2019, shift manager Jonathan Bruns told the claimant to go home early from his shift. Mr. Bruns had sent the claimant home early on more than one occasion and this affected the claimant's pay as an hourly employee. On December 10, 2019, Mr. Bruns reported to management that claimant walked off the job. Claimant asked for video evidence to be reviewed to show that he was told to go home and did not walk off the job. He called the employer's Human Resources Hotline on December 10, 2019 to report this matter.

He was not scheduled to work on December 11, 2019. He worked his full shift on December 12, 2019, and then was told by Kavona McDaniels that he was being suspended. The suspension was for him going home early on December 10, 2019 when Mr. Bruns told him to do so but reported that he walked off the job. He was given a final written warning for this. See Exhibit A. He called the employer's Human Resources Hotline again on December 12, 2019. He continued to be suspended from December 12, 2019 until December 18, 2019. He did not hear back from human resources until December 17, 2019.

On December 17, 2019, Juliet Diaz, human resources manager, contacted the claimant by telephone. See Exhibit 1. When addressing claimant's concerns about being overworked because of the managers use of cell phones on duty, she advised him that managers were allowed to use their phones and when they are in the office or the conversation they are having while at work are not of his concern. See Exhibit 1.

Claimant was also informed that management was trying to staff the store with more employees, which was a double edge sword because as the store gets staffed they have to reduce the hours of their intended part-time staff, including the claimant. See Exhibit 1. Claimant was told not to be a "negative Nancy" by Ms. Diaz and was advised that he could go back to work the following day, December 18, 2019.

Ms. Kelley also contacted claimant on December 17, 2019 via text message regarding his return to work and told him that he could come back with the final written. See Exhibit 1. She further stated that just because he doesn't agree with her managers on how they do things, isn't for him to say. See Exhibit 1.

Claimant returned to work on December 18, 2019 and was told by shift manager Bruns to go home early because he did not want to hear him "bitching". See Exhibit 1. Claimant was also told by Mr. Bruns to act his age and not his shoe size. See Exhibit 1. Claimant immediately contacted Ms. Diaz via text message about being sent home early again the night of December 18, 2019. See Exhibit 1.

Ms. Diaz responded to him the morning of December 19, 2019 via text message. See Exhibit 1. Claimant informed her that he was upset with his hours being cut each time he was being sent home early and that he missed his hours while he was on suspension. See Exhibit 1. In his text message to Ms. Diaz the morning of December 19, 2019, he reported to her that he

believed that Mr. Bruns' actions in cutting his shift short and sending him home early was based on his personal grudges against him. See Exhibit 1. Ms. Diaz responded that some of them weren't totally personal and that he was at the part time hours they would normally offer. See Exhibit 1. Claimant tendered his written resignation that same day, December 19, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge finds that the claimant voluntarily quit 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.

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).

In this case, the claimant voluntarily quit his employment by tendering a written resignation. As such, claimant must prove 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).

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. Our 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). Therefore, claimant was not required to give the employer any notice with regard to the

intolerable or detrimental working conditions prior to him quitting. However, he reached out to management and human resources several weeks prior to his resignation reporting specific issues he was having.

"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 (Iowa 1956).

The claimant 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 supervisors were lying to management about him walking off the job, where supervisors were smoking marijuana outside the building, where proper food safety policies were not being followed, where occupational safety policies were being violated by allowing non-employees to cook food on the employer's kitchen equipment, and where it was clear that the claimant was being retaliated against for reporting workplace safety violations when he was terminated, suspended, and repeatedly sent home early by management.

Claimant has proven that his working conditions were intolerable and detrimental. Thus, the separation was with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The January 10, 2020 (reference 05) unemployment insurance decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Dawn Boucher
Administrative Law Judge

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Decision Dated and Mailed

db/scn