

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**KELLY L DURRETT-ELDER**  
Claimant

**EYM KING OF IOWA LLC**  
Employer

**APPEAL 14A-UI-09827-LT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/24/14**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The employer filed an appeal from the September 15, 2014, (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on October 9, 2014. Claimant participated. Employer participated through restaurant general manager Annette Riggan. Employer's Exhibit One was received.

**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 drive-through cashier and was separated from employment on August 27, 2014. Her last day of work was August 25, 2014. When she arrived at work others were verbally goofing around so she joined in but manager Kyle Potter threatened to write her up. He also deliberately slowed making sandwiches for her customer's order and told her husband he would hit her if she were not pregnant. On August 26 claimant called to report she was unable to open the store. She expected to be at work but while in Missouri to help a homeless friend, she was delayed in her return by flooding. Riggan instructed Potter to suspend her for a week for failing to open. He did so when she reported later that day. Claimant texted Riggan and wanted to talk to her but Riggan was with family and told her they would talk in person on August 27 at 5 p.m. Claimant sent Riggan a text message that she did not want to talk to her with Potter and said she was done working with him because he had been harassing her.

**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(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.

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).

Potter's harassment of and threat to hit claimant, especially in his position as co-manager, created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

**DECISION:**

The September 15, 2014, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs

**NOTE TO EMPLOYER:**

If you wish to add the suite number of record, please access your account at:  
<https://www.myiowaui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

[http://www.youtube.com/watch?v=\\_mpCM8FGQoY](http://www.youtube.com/watch?v=_mpCM8FGQoY)