IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

TYRONE GOWDY Claimant **IOWA OFFICE INTERIORS INC** Employer	**APPEAL 15A-UI-04728-EC-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/29/15** **Claimant: Appellant (2)**

Iowa Code §96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant, Tyrone Gowdy, filed an appeal from the April 14, 2015, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit, or leaving his employment voluntarily. The parties were properly notified about the hearing. A telephone hearing was held on May 26, 2015. The claimant participated in the hearing, along with his attorney, Stuart Higgins. The employer did not participate in the hearing.

ISSUE:

Did the claimant voluntarily quit his employment with good cause attributable to his 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 warehouse worker in the Storey Kenworthy store in downtown Des Moines, Iowa, from February 7, 2014, until he was separated from this employment on April 2, 2015, when he decided to quit due to racial discrimination.

The pertinent evidence is not disputed. The claimant initially worked as a temporary employee for this employer, beginning in about April of 2013. He became a permanent full-time employee on February 7, 2014. He performed various duties in the store warehouse. Ralph Farnsworth, Operations manager, was his direct supervisor. Mr. Farnsworth is Caucasian. The claimant is African American. Mr. Farnsworth made hiring and firing decisions.

Mr. Farnsworth called the claimant a “colored person” at least twice, in January or February of 2015. Mr. Farnsworth referred to an African American delivery truck driver as a “chocolate lady.” The claimant was offended at the use of these offensive and racial derogatory terms. The claimant reported Mr. Farnsworth’s conduct to the store owner, Mr. Kenworthy, and the VP of HR, Melanie Clayton. They did not do anything to stop Mr. Farnsworth’s name calling and offensive behavior. Instead, Ms. Clayton told the claimant that they would not fire the operations manager. She told the claimant that they should get along and work together.

The claimant always performed his job duties well. He was asked to trained new warehouse workers. The claimant did not want to train the "young kids" because they did not listen to him. The claimant's job was not in jeopardy at the time he left this employment. His job performance remained the same.

The claimant reported other examples of Mr. Farnsworth's racist comments, which were made directly to the claimant. The claimant took time off, usually the rest of the day, after Mr. Farnsworth made these comments, because the comments and racial references offended him.

The claimant's work environment changed after he reported Mr. Farnsworth's comments to HR. His co-workers reacted differently, generally ostracizing him. The work environment had previously been friendly. The claimant had enjoyed his job and the work environment before his supervisor made the racist comments and before he reported this information to HR.

On April 2, 2015, the claimant told Melanie Clayton that it was time to "split ways" because of the discrimination. She told him that they should get along and work together.

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 is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.,* 710 N.W.2d 1 (Iowa 2005). Even though such a notice is not required under these circumstances, I note that this claimant had reported his supervisor's offensive comments and gave his employer ample opportunity to cure the problem. His employer chose not to effectively address the situation.

This notice was previously 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 Iowa Admin. Code r. 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to Iowa Admin. Code r. 871-24.26(4), the intolerable working conditions

provision. The Iowa Supreme Court concluded that, because the intent-to-quit requirement was added to rule 871-24.26(6)(b) but not rule 871-24.26(4), notice of an 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 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). Because an employer can expect professional conduct and language from its employees, the claimant is entitled to a working environment without enduring abusive, offensive, or obscene name-calling. An employee should not have to endure bullying or a public dressing down with abusive 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 U.S. Supreme Court held that a cause of action for sexual harassment may be predicated on two types of harassment: (1) Harassment that involves the conditioning of concrete employment benefits on sexual favors, and (2) harassment that, while not affecting economic benefits, creates a hostile or offensive working environment. *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 62 (1986). Even though this claimant reported racial harassment, not sexual harassment, the basic principles remain the same. Racial harassment that creates a hostile or offensive working environment may be actionable.

It is important to consider whether or not a reasonable person would have quit under these circumstances. See *Aalbers v. Iowa Dept. of Job Service*, 431 N.W.2d 330, 336 (Iowa 1988); and *O'Brien v. Emp't Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

The undisputed evidence clearly established that the claimant's supervisor's comments, and his employer's failure to take action to correct his offensive conduct, created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The April 14, 2015, (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible and benefits withheld shall be paid.

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Emily Gould Chafa
Administrative Law Judge

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Decision Dated and Mailed

ec/pjs