

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOHN R PETTEY
Claimant

MASTERSON PERSONNEL INC
Employer

APPEAL 15A-UI-01662-KCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/17/14
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 4, 2015, (reference 05) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 6, 2015. The claimant participated. The employer did not participate and did not register to participate as provided in the hearing notice.

ISSUE:

Did the claimant quit a temporary assignment for good cause related to the employment or did he quit by not reporting for additional work assignments within three business days of the end of the last assignment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a factory line door sander and was separated from employment on September 17, 2014, when he quit due to the working conditions.

The claimant received the assignment to Currie from Masterson Personnel. Each day that he worked, co-workers were making slurs about a co-worker regarding sexual orientation. When the co-workers learned that the subject of the sexual comments was receiving transportation from the claimant due to the co-worker's car trouble, the sexual comments turned to both the claimant and his co-worker and suggested that they were in a homosexual relationship. The language used was profane and offensive to the claimant. The claimant told the line lead at Currie that it was inappropriate, but that person was one of the people involved in the ongoing sexual comments. The claimant also advised the lead line worker that the exhaust units designed to remove the sanded materials had not been cleaned and the air quality was poor in the work area. He was told that the units were cleaned. The claimant told him that he had serviced the same equipment model before and they were not cleaned adequately.

He left the worksite on September 17, 2014 and reported to Masterson Personnel the next day. He advised Adam, with whom he had been talking, that he could not stay at the assignment

because of the working conditions. He identified the intolerable working conditions including sexually inappropriate comments on a daily basis and poor air quality due to inadequately maintained dust removal systems. Adam asked the claimant to complete a written statement of what he had experienced. He also asked the claimant if he was willing take another assignment in the future. There were no assignments available at that time. The claimant said he would take another assignment.

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), (2) 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.

(2) The claimant left due to unsafe 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).

The U.S. Supreme Court has 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).

"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). Inasmuch as an employer can expect professional conduct and language from its employees, the claimant is

entitled to a working environment without being the target of abusive, 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 assigned client created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. The claimant also reported to the employer at the end of the assignment that he was available for other assignments. Benefits are allowed.

DECISION:

The February 4, 2015, (reference 05) 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 the benefits withheld shall be paid.

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/pjs