

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**THOMAS M FITZPATRICK**  
Claimant

**APPEAL NO. 08A-UI-01174-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MONGAN PAINTING CO INC**  
Employer

**OC: 01/06/08 R: 01**  
**Claimant: Appellant (2)**

Section 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated January 30, 2008, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on February 18, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Denise Kraft participated in the hearing on behalf of the employer.

**ISSUE:**

Did the claimant voluntarily quit employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

The claimant worked full time as a painter for the employer from September 3, 2007, to December 21, 2007. Shortly before Thanksgiving, Rick Mongan, held a meeting with about 30 employees, including the claimant. In the meeting, Mongan told the employees that he had received reports of employees quitting employment because other employees were smoking marijuana while out on the road on jobs. He warned the employees that they needed to stop smoking marijuana and perform their work.

Prior to the meeting, the claimant went out of town for work with employees who smoked marijuana in the cars to and from the jobsites and in the motel rooms where they stayed. After the meeting, the marijuana smoking continued. The claimant does not smoke marijuana and found working with employees who smoked marijuana to be intolerable. He complained to the lead persons on the jobs about the marijuana smoking, but the lead persons were involved in smoking marijuana themselves. The lead persons told the claimant that if he reported them, he would regret it. The claimant was afraid of retaliation from the lead workers if he reported their smoking marijuana to Mongan.

On December 21, 2007, the claimant decided to quit employment because he could no longer tolerate working with individuals who were smoking marijuana. He notified Mongan that he was quitting but did not give a reason.

## REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

Iowa Code section 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.

871 IAC 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.

Before the Supreme Court decision in Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005), this case would have been governed by my understanding of the precedent established in Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The Cobb case established two conditions that must be met to prove a quit was with good cause when an employee quits due to intolerable working conditions or a substantial change in the contract of hire. First, the employee must notify the employer of the unacceptable condition. Second, the employee must notify the employer that he intends to quit if the condition is not corrected. If this reasoning were applied in this case, the claimant would be ineligible because he failed to notify the employer of his intent to quit if the intolerable working conditions were not corrected.

In Hy-Vee Inc., however, the Iowa Supreme Court ruled that the conditions established in Cobb do not apply when a claimant quits due to intolerable or detrimental working conditions by reasoning that the Cobb case involved “a work-related *health* quit.” Hy-Vee Inc., 710 N.W.2d at 5. This is despite the Cobb court’s own characterization of the legal issue in Cobb. “At issue in the present case are Iowa Administrative Code Sections 345-4.26(1) (change in contract for hire) and (4) (where claimant left due to intolerable or detrimental working conditions).” Cobb, 506 N.W.2d at 448. In any event, the court in Hy-Vee Inc. expressly ruled, “notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions.” Hy-Vee Inc., 710 N.W.2d at 5.

The court in Hy-Vee Inc. states *what is not required* when a claimant leaves work due to intolerable working conditions but provides no guidance as to *what is required*. The issue then is whether claimants when faced with working conditions that they consider intolerable are required to say or do anything before it can be said that they voluntarily quit employment with “good cause attributable to the employer,” which is the statutory standard. Logically, a claimant should be required to take the reasonable step of notifying management about the unacceptable condition. The employer’s failure to take effective action to remedy the situation then makes the good cause for quitting “attributable to the employer.” In addition, the claimant should be given the ability to show that management was independently aware of a condition that is objectively intolerable to establish good cause attributable to the employer for quitting.

Applying these standards, the claimant has demonstrated good cause attributable to the employer for leaving employment. First, being required to work with employees who are involved in using illegal drugs is objectively intolerable. Second, the claimant complained to the lead persons who would be considered agents of management. Not only did these individual not take any action to correct the situation, they in fact had threatened the claimant if he reported the illegal drug use, which creates an additional intolerable working condition. Third, Mongan was aware of other employees who had quit due to drug use. Obviously, no effective action was taken to remedy the situation because the drug use continued even after the staff meeting.

**DECISION:**

The unemployment insurance decision dated January 30, 2008, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs