

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KIMBERLY L SMITH
Claimant

HAWKEYE MUFFLERS INC
Employer

APPEAL 15A-UI-13181-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/11/15
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The employer filed an appeal from the November 18, 2015 (reference 01) unemployment insurance decision that allowed benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on December 16, 2015. Claimant participated. Employer participated through owner Dan Elias. Employer's Exhibits One and Two were received. Claimant's Exhibits A through F were 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 an office clerk from March 4, 2013 and was separated from employment on October 14, 2015; when she quit.

Most recently on October 9, 2015, Tammy and Ninwa confronted the claimant about why she deleted Ninwa from Facebook. This resulted in an anxiety attack so claimant left to go to the doctor. She did not receive advice to quit her job (Claimant's Exhibit A, Page Three and C). Later that day she returned and complained to Elias, who told her to ignore them. He brought them together for two hours and talked to them about separating personal issues with work time and cross training. On October 12, 2015, claimant believed she was going to be replaced when she was asked to train someone else to do her job, after having been told that four people in the office was too many (Claimant's Exhibit A, Page Four).

On September 23, 2015, controller Jeanette told claimant to park elsewhere and threatened to write her up but could not tell her where she should park so claimant went to Elias who told her to park at back of the building; which is where she had been parking.

On July 9, 2015 Elias asked claimant to change policies in the handbook dated July 28, 2012 in Sections 201 and 206 (Claimant's Exhibits B, Pages Seven and Eight, and A, Page Two) and use the date July 28, 2013 for the change; rather than July 2015 (Claimant's Exhibit D, Page Seven). This was near the date for resolution of an unemployment insurance benefits contested case involving former employee Alex Gaithright, who quit in June 2015.

In June 2014, Elias asked her to alter the handbook and an existing non-compete agreement for former employee Dave Tucker who had quit and was said to have been recruiting current employees (Claimant's Exhibits A, Page One, and E, F, and D, Page 18).

Claimant detailed numerous incidents over the course of her employment of name calling by her supervisor/office manager Karen, inappropriate office language with a raised voice, slamming file cabinet drawers from Elias, and general threats to fire her from the controller (Claimant's Exhibit A).

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.

Claimant has the burden of proving 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). 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).

Where claimant was required to work in two separate positions and received contradictory instructions from two different supervisors and quit after being reprimanded for his job performance was entitled to benefits. *McCunn v. Emp't Appeal Bd.*, 451 N.W.2d 510 (Iowa Ct. App. 1989).

“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, 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 claimant's testimony is considered credible since Elias interrupted and raised his voice during the hearing, thus giving credence to claimant's allegations about his behavior at work. Elias' behavior, coupled with Jeanette and Karen's ongoing mistreatment of her, created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Further, given the employer's unethical demands that she change the handbook and the non-compete agreement, claimant was reasonable to expect that further such demands would continue to occur.

DECISION:

The November 18, 2015 (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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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