

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARLA J CLARKE

Claimant

APPEAL NO. 09A-UI-06259-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC

Employer

**Original Claim: 03/08/09
Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Leaving
871 IAC 24.26(4) – Intolerable Working Conditions

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 13, 2009, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on May 18, 2009. Claimant participated. Employer participated through Hanna Cook, Staci Albert, and Amber Davis.

ISSUE:

The issue is whether quit the employment without good cause attributable to the employer or if she was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a technical support professional and was separated on March 12, 2009. Both parties agree she quit the employment. On March 12 Martin called claimant into her office to discuss her attendance (clocking out early on March 8) and to issue a warning. Claimant did not believe she had clocked out early the day before and asked Martin to provide her with proof. Martin declined. Claimant asked her if she was going to be fired. Martin replied that she was not sure but she believed she would be and would check and get back to her later in the afternoon. Claimant asked her to make a decision then because she wanted to quit if it was employer's intent to fire her, as she did not want to have a discharge on her resume. Martin responded, "Don't do that, we need you today on the phones." Claimant said she would not work all day just to be fired, cleaned out her desk, turned in company property and left. She was still upset after her daughter's automobile accident on March 5 and the warning she received for that absence, as well as the warnings for her absences related to her husband's emergency treatment and her father's hospitalization. Because of that, she was not thinking clearly, so she did not attempt to contact other management personnel.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the 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.

871 IAC 24.26(3) and (4) provide:

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:

(3) The claimant left due to unlawful working conditions.

(4) The claimant left due to intolerable or detrimental working conditions.

Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, 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 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. Employment 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. EAB*, 451 N.W.2d 510 (Iowa App. 1989).

Employer's failure to provide claimant proof of the time clock punch upon request when they had the ability to do so reasonably infers employer does not have evidence to support the allegation she left early. The employer's issuance of an unsubstantiated warning threatening her job and its failure to pay wages for all time worked in order to reach log-in status by 8 a.m. 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 13, 2009, reference 01, decision is affirmed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw