

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIETTA R FISCUS

Claimant

APPEAL NO. 13A-UI-00177-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR STORES OF IOWA INC

Employer

OC: 12/02/12

Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The employer filed an appeal from the December 28, 2012 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on February 8, 2013. Claimant participated with friend and former coworker, Sandy Briseno and Roberta Barker and was represented by Michelle Jungers, Attorney at Law. Employer participated through store manager, Karen Everett and district manager, Frank Sposeto. Claimant's Exhibit A was received. Proposed witness Sandy Briseno did not participate.

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 assistant manager from March 12, 2008 and was separated from employment on December 5, 2012. She had been sick with a head cold for a week and a half and had to go to the bathroom urgently. When she came out she told Everett she was unable to continue working. Everett told her to call for a replacement. One did not answer the other was not able to come in and work for her. She told Everett who yelled at her in front of customers that she would not be sick if she did not make herself sick. Claimant began crying. Everett told her, "You are being ridiculous; this is very unprofessional." Claimant waited on a few more customers and quit. This was two days before the end of a probationary period when her keys were taken away for two weeks because her sales dipped below store average expectations. Her sales had been improving during that probation period.

On December 1, 2012 Everett yelled at her in front of customers that she was the most disrespectful person she had ever met after she had simply counted her register and clocked out. Claimant felt like she always chose the wrong thing to do so she just learned not to say anything. Everett said things to claimant in front of customers at least once every six months that made her cry. Claimant asked for her to talk to her about concerns in the back room rather than in the open. A customer, who is a supervisor at Lennox, told her she was horrified how Everett treated her and would never treat her subordinates like that.

Several weeks earlier Everett asked her “what is wrong with you?” Claimant told her she was depressed and not sleeping well but could not afford to go to the doctor. Everett told her she could not afford not to go and that it was affecting her job, which claimant took as a threat. She went to the doctor and took the next three weeks off on Family Medical Leave Act (FMLA) leave. Claimant reported these incidents about Everett to the employer’s human resources worker that processed her FMLA paperwork and to Sposeto while he was working surveillance with her.

Barker, who quit on September 5, 2012, recalls that, shortly after she was hired in 2011, Everett yelled at her in front of customers after a milk spill and she asked Everett how she wanted it to be cleaned. She felt embarrassed (“like an ant”) and started to cry in front of customers. Claimant told her to take a breather and clean it up. Barker also heard Everett say “I can’t believe she’s acting like this” to other employees in front of customers. Barker quit because of how Everett confronted employees on the floor in front of customers, because Everett talked to one employee about other employees, and how Everett slammed a freezer door on Barker’s father when he was shopping and looking through an open freezer door. Barker observed that claimant was a hard worker and did her job.

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 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.

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 871 IAC 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 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. Claimant did not quit because of, but in spite of her being within two days of the end of a sales improvement probationary period. The record credibly establishes that Everett created an intolerable work environment that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The December 28, 2012 (reference 01) 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

dml/tll