

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SARA J POWER
Claimant

BATH & BODY WORKS LLC
Employer

APPEAL 20A-UI-03344-DG-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code 871-24.26(4) – Intolerable Work Conditions

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 20, 2020, (reference 01) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on May 13, 2020. Claimant participated. Employer failed to respond to the hearing notice and did not participate.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on August 26, 2019. Claimant left the employment on that date because her work environment had become intolerable.

Claimant began working for employer on or about August 5, 2019. During her first week of employment claimant noticed that her manager liked to touch her and get close to her at work. Claimant's manager would put her hand on claimant's arm and shoulder, and then leave it there while she spoke to claimant. At first claimant thought the touching was just an isolated occurrence, but as the touching continued she learned that she was being sexually harassed at work by her manager.

Claimant liked her job, and she wanted to keep working there. She hoped that the touching would stop, and she could just do her work without being worried about being sexually harassed. Unfortunately, the lingering touches to her arms and shoulders increased in frequency and duration during the second and third week of August, 2019.

Claimant began suffering psychological trauma at work, and she was afraid to say anything to anyone about the sexual harassment she was enduring. Finally, on August 26, 2019 claimant determined that the sexual harassment was only getting worse, and she had to leave the

employment. Claimant did not return to work after that date because her work environment had become intolerable.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because her work environment had become intolerable.

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.

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.

Iowa Admin. Code r. 871-24.26(3) 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:

- (3) The claimant left due to unlawful 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). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

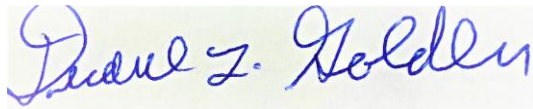
Individuals who leave their employment due to disparate treatment are considered to have left work due to intolerable or detrimental working conditions and their leaving is deemed to be for good cause attributable to the employer. The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Dep't of Job Serv.*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Emp't Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

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 concluded that, because the intent-to-quit requirement was added to Iowa Admin. Code r. 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).

Claimant's left the employment because her work environment was intolerable, her separation from employment was for a good-cause reason attributable to the employer. Benefits are allowed.

DECISION:

The decision of the representative dated April 20, 2020, reference 01, is reversed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.



Duane L. Golden
Administrative Law Judge

May 19, 2020
Decision Dated and Mailed

dlg/mh