

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HUNTER K WATSON
Claimant

SWIFT PORK CO
Employer

APPEAL 16A-UI-08847-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/17/16
Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The employer filed an appeal from the August 4, 2016, (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 August 31, 2016. Claimant participated. Employer participated through human resources representative Rogelio Osorio.

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 as a full-time evening production worker (rib puller) through July 15, 2016. His last day of work was July 7, 2016. Coworker Nick told claimant he thought it was funny that he (Nick) had knocked a coworker's (Candy) hard hat off. Claimant told him he did not think it was funny. Nick replied asking if claimant would think it was funny "if I shoved my steel into your neck." Claimant told him, "that sounds like a threat." Nick responded, "No, that's a promise." Craig and Dan were present about three to six feet away. Claimant asked Craig if he heard it and he had not so Nick repeated it again. Claimant did not say anything the rest of the night. Nick is generally rude and harassed claimant and coworker Andy. He had sharpened his steel earlier that week, which made claimant more concerned. Nick often spoke of getting into fights. This was the first time claimant reported Nick's behavior. They worked about three feet away from each other. Claimant tried to report the incident to upper management that night but was unable to do so as there was no one in the office so he reported the incident the next day. He felt endangered enough not to raise the issue while Nick was still on premises because supervisor Wes Wise is friends with Nick. Claimant met with Osorio, a union steward and two foremen. He did not feel comfortable staying to work while the employer investigated. The employer investigated and did not find "conclusive evidence." Neither party notified the Ottumwa police department where the work site is located and Nick lives. There was no discussion about switching shifts or lines because the employer is very short-staffed and claimant has low seniority.

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.

The decision in this case rests, at least in part, upon the credibility of the parties. The employer did not present a witness with direct knowledge of the situation. Noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of 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) and (2) 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.

(2) The claimant left due to unsafe 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).

The coworker's threats of violence and ongoing harassment created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment.

DECISION:

The August 4, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs