IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JOANNE RUDY
Claimant

DOLGENCORP LLC
Employer

APPEAL NO: 14A-UI-11490-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/05/14
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 27, 2014, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on November 26, 2014. The claimant participated in the hearing with witness/former acting manager Lincoln Brown. The employer provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Based on the appellant's failure to participate in the hearing, the available evidence in the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision:

ISSUE:

The issue is whether the claimant voluntarily left her employment for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time assistant manager for Dolgencorp from April 28, 2012 to October 7, 2014. She voluntarily left her job due to intolerable working conditions.

On October 7, 2014 the claimant received a written warning because she did not close and lock the office door when she went to get the register report October 5, 2014. The claimant had closed and locked the store and went in the office to count the store's proceeds from the day. She then went to the register to run the register report, which took between one to two minutes, while the other associate performed the closing cleaning duties. The claimant then returned to the office and finished the books, placing the money in a deposit bag and the bag in the safe. The claimant followed the closing procedure as she was trained and did not do anything differently than she had done every night she closed. She had never been told she was closing incorrectly.

On October 7, 2014 Store Manager Kelly Yoe issued the claimant a written warning for failing to protect company assets by leaving money unattended in the office. Ms. Yoe stated she and District Manager Nic Weber watched the video of the claimant's closing October 5, 2014 and saw her leave the money in the unlocked office when she went to get the register report. The claimant told Ms. Yoe she had always done it that way and that was the way she had been trained. She stated she had never been told it was wrong in the past or a violation of standard operating procedures. Ms. Yoe said a customer could hide in the bathroom and crawl through the drop ceiling, past the employee restroom, and get into the office when the money was out. The claimant disagreed that could happen, especially in that amount of time and with a drop ceiling.

Ms. Yoe started working at the claimant's location a few months earlier and often criticized store employees for not performing their tasks the way they were performed at Ms. Yoe's previous store. She repeatedly, and nearly daily, threatened the claimant with having her hours cut, written warnings, and termination; any time the claimant did something differently than the way it was done at Ms. Yoe's previous store. The claimant was performing her duties the same way as everyone else and the way she had been trained but Ms. Yoe continued to find fault with the claimant's work. Previous manager had reviewed video of the claimant's closing routine in the past and had never told the claimant she was doing anything incorrectly.

Lincoln Brown, the claimant's witness and a former acting manager for the employer, testified he was never told to lock the office door when going to get the register report when closing until loss prevention commented about it shortly before Mr. Brown's separation in July 2014. Mr. Brown indicated that prior to his separation, Mr. Weber strongly encouraged him to issue written warnings to the claimant and an associate and told him to try to "get rid of" the claimant and if she did "anything wrong give her a written warning." Mr. Brown finally resigned because he could not treat the claimant unfairly when she was not doing anything inappropriate or that violated the employer's policy as he was being pressured to do.

The claimant submitted her resignation, effective immediately, October 7, 2014 because she could no longer tolerate being threatened by Ms. Yoe with having her hours cut, a written warning, and termination during every shift she worked.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant voluntarily left her 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.

The law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that she intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. Hy-Vee, Inc. v. Employment Appeal Board and Diyonda L. Avant, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The claimant subsequently quit due to those conditions. The claimant is eligible to receive unemployment insurance benefits.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

The claimant's treatment was intolerable because the employer threatened her with a cut in hours, written warnings, and termination nearly every shift she worked. Her testimony was seconded by Mr. Lincoln who left his employment because the employer was pressuring him to "get rid of" the claimant and another employee even though they had not done anything wrong. An employee should not have to face that kind of unwarranted treatment, seemingly without reason, when simply trying to perform her job to the best of her abilities. Under these circumstances, the administrative law judge must conclude the claimant has demonstrated that her leaving was for good cause attributable to the employer as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The representative's decision dated October 27, 2014, reference 01, is reversed. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

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