

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA L MULLEN
Claimant

APPEAL NO. 07A-UI-09364-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

**OC: 09/02/07 R: 02
Claimant: Appellant (2)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 27, 2007, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on October 22, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from February 7, 2007, to August 31, 2007. The claimant was assigned a position in the piping department that involved cleaning large intestines. The job was fast-paced and the claimant had problems keeping up as did her partner on the line. The claimant became upset because the supervisors constantly berated her even though she was working as fast as she could. She observed that she was criticized but her partner was not even though they were working together. There were three piping crews and the claimant noticed times when her crew was given more work than the other crews. She complained to her supervisors about this unequal treatment but nothing was done.

The claimant asked for a meeting with the plant manager but was told he was not available. When she kept insisting, her immediate supervisor said he would set one up for the next day. When she reported to work the next day, her supervisor told her that the meeting had been cancelled by his supervisor, which the claimant discovered was untrue.

Finally, the claimant went to the plant manager after being disciplined for not working fast enough. She complained that she was being discriminated against and that the work was not being equally distributed. The plant manager assured her that he would look into the matter, but nothing changed.

The final incident took place in August. One of the earplugs she was required to wear broke off in her ear canal. She first went to the nurse and was told that she could not remove it. She should have been sent to the hospital, but the second-shift supervisor (who is not medically trained) took the earplug out with tweezers. Afterward, the claimant started feeling dizzy and was assigned to hand out gloves. She went to the doctor and was absent from work the next day. The employer assigned her a point even though the absence was due to a work-related condition.

The claimant voluntarily quit employment due to intolerable working conditions due to the treatment she received by her supervisors and the lack of action by management after she repeatedly complained about this treatment. The claimant did not tell a supervisor that she intended to quit her employment if working conditions were not corrected.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without 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.

Before the Supreme Court decision in Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005), this case would have been governed by my understanding of the precedent established in Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The Cobb case established two conditions that must be met to prove a quit was with good cause when an employee quits due to intolerable working conditions or a substantial change in the contract of hire. First, the employee must notify the employer of the unacceptable condition. Second, the employee must notify the employer that she intends to quit if the condition is not corrected. If this reasoning were applied in this case, the claimant would be ineligible because she failed to notify the employer of her intent to quit if the intolerable working conditions and the substantial change in the employment contract were not corrected.

In Hy-Vee Inc., however, the Iowa Supreme Court ruled that the conditions established in Cobb do not apply when a claimant quits due to intolerable or detrimental working conditions by reasoning that the Cobb case involved "a work-related *health* quit." Hy-Vee Inc., 710 N.W.2d at 5. This is despite the Cobb court's own characterization of the legal issue in Cobb. "At issue in the present case are Iowa Administrative Code Sections 345-4.26(1) (change in contract for hire) and (4) (where claimant left due to intolerable or detrimental working conditions)." Cobb, 506 N.W.2d at 448.

In any event, the court in Hy-Vee Inc. expressly ruled, “notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions.” Hy-Vee Inc., 710 N.W.2d at 5. The court in Hy-Vee Inc. states *what is not required* when a claimant leaves work due to intolerable working conditions but provides no guidance as to *what is required*. The issue then is whether claimants when faced with working conditions that they consider intolerable or a change in the contract of hire that they consider substantial are required to say or do anything before it can be said that they voluntarily quit employment with “good cause attributable to the employer,” which is the statutory standard. Logically, a claimant should be required to take the reasonable step of notifying management about the unacceptable condition or change. The employer’s failure to take effective action to remedy the situation then makes the good cause for quitting “attributable to the employer.” In addition, the claimant should be given the ability to show that management was independently aware of a condition that is objectively intolerable or was a willful breach of the contract of hire to establish good cause attributable to the employer for quitting.

Applying these standards, the claimant has demonstrated good cause attributable to the employer for leaving employment. She complained repeatedly about the detrimental working conditions. The second-shift supervisor had to know that performing a medical procedure without training was improper. A reasonable manager would have sent the claimant for medical attention immediately. Intolerable working conditions attributable to the employer have been established in this case.

DECISION:

The unemployment insurance decision dated September 27, 2007, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs