

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LISA K WILLENBRING
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EAST IOWA MACHINE COMPANY INC
EIMCO
PO BOX 100
FARLEY IA 52046-0100

Appeal Number: 04A-UI-06572-SWT
OC: 05/09/04 R: 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 27, 2004, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on July 12, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Mary Hoffman participated in the hearing on behalf of the employer with witnesses, Rick Hoffman and Karen Kutsch. Exhibits 1-1, 1-2, 2-2, 2-3, 2-4 and 4A, 2-5, 2-6 and 6A, and A were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked for the employer as an inventory specialist from April 7, 2003 to May 7, 2004. Her immediate supervisor was Karen Kutsch, the office manager. Rick Hoffman and Mary Hoffman are the owners of the business.

On April 16, 2004, Kutsch and the Hoffmans met with the claimant and presented a employee performance improvement plan that stated that the claimant was not meeting the performance requirements in the areas of: (1) commitment to a proactive approach in addressing customer needs, (2) prioritizing work appropriately, and (3) consistently following up on written/verbal communication. The plan set action items that had to be addressed and informed the claimant that if the action items were not satisfactorily completed in 30 days, further disciplinary action, up to and including termination, would be followed.

The claimant was shocked and upset by the critical tone of the plan and how Mary Hoffman presented it. Hoffman told the claimant that the employer had withheld some of her job duties because she was not able to complete all the work assigned to her. The claimant was unaware that she was not performing all her job duties and asked for her job description because she had not been given a copy of it. Hoffman accused her of having tunnel vision and could not see the extra things that needed to be done in the shop. The claimant considered the remark unfair and inconsistent with the criticism that she was not completing her job duties. She was distressed that the employer was stating that her job was in jeopardy when she had never been disciplined or warned before about her deficiencies.

During the next three weeks, the claimant worked to the best of her ability to address the action items in the improvement plan. She was frustrated because they had told her that they would have someone else covering the phones and reduce some of her workload until she was caught up but they did not follow through with the assurance. The claimant requested to work overtime to get caught up. Initially, Mary Hoffman denied her request for overtime, but later Rick Hoffman allowed the claimant two hours of overtime. The claimant expressed to Mary Hoffman that she was not sure that it was worth it because of the stress it was causing her to not be able to sleep or eat.

A week after April 16, the employer placed an advertisement in the paper for a job with a similar job description to the claimant's job. The claimant was not informed that they were hiring another office worker and was concerned that they were going to replace her. In fact, the position was not intended as a replacement for the claimant but was a recognition that the workload in the office required more employees.

On May 7, 2004, the claimant was called into a follow-up meeting with Kutsch and the Hoffmans. The claimant discussed her progress on one of the main action items and then said she had a question about her job description. Mary Hoffman laughed at the claimant and said she could not believe the claimant had the audacity to say she had questions about her job description. She continued to laugh and asked the claimant why she had not asked the question before. The claimant was very hurt by the Mary Hoffman's conduct and explained that she had just received the job description at the previous meeting. The claimant then asked if the job advertised was her job. Mary Hoffman said no but the claimant was unconvinced when Mary Hoffman did not directly answer the question.

Due to the treatment she received during the meeting on April 16, during the time period leading up to May 7, and during the meeting on May 7, 2004, the claimant felt demoralized and believed she could no longer work for the employer. On May 8, 2004, the claimant went into the office and composed an email to Rick Hoffman stating that she was quitting and that she did not want to work where she was not wanted. The employer's conduct was not done with the intention of causing the claimant to quit.

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.

The Iowa Supreme Court in Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993) established 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 claimant must notify the employer of the unacceptable condition or change. Second, the claimant must notify the employer that she intends to quit if the condition or change is not corrected.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. While the employee performance improvement plan and its presentation were critical and caught the claimant off guard, this would not constitute intolerable or detrimental working conditions. An employer has the right to take corrective action to improve an employee's performance and that is what the employer was doing on April 16.

The claimant testified very credibly about Mary Hoffman's mocking comment when the claimant said she had a question about her job description. I believe the claimant's testimony despite Hoffman's adamant denial that she laughed or used the word "audacity." I conclude that this conduct by an employer toward an employee would be intolerable under the circumstance of this case. The claimant, however, quit without any advance notice and did not make an effort to resolve her complaints before taking the drastic step of quitting her job. As a result, the claimant voluntarily quit employment without good cause attributable to the employer.

DECISION:

The unemployment insurance decision dated May 27, 2004, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

saw/tjc