

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CAMERON FREEMONT
Claimant

APPEAL 15A-UI-14002-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BLACKBIRD BEND CORPORATION
CASINOMAHA**
Employer

**OC: 11/22/15
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871 IAC 24.26(4) – Intolerable Working Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 11, 2015, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on January 13, 2016. Claimant Cameron Freemont participated and testified. Employer Blackbird Bend Corporation Casinomaha participated through Human Resources Specialist Jasmine Galvin.

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 full time as a cage supervisor from January 7, 2013, and was separated from employment on September 18, 2015, when he quit.

Beginning on August 14, 2015, claimant's immediate supervisor, Manager Carla Dekeyser, went on a two-month leave of absence. Dekeyser's immediate supervisor, Finance Director Jim Robins, was claimant's acting manager during this time period. While Dekeyser was on leave, the claimant, and the other cage supervisors, were responsible for performing many of Dekeyser's duties, in addition to their own regular work duties. These duties included making a bank deposit every Wednesday, making the schedule for the department, ordering more coins, and handling service calls for kiosks that broke frequently. At some time prior to August 14, 2015, the claimant's schedule was also changed from only day shifts to switching between the day shift, from 7:00 a.m. to 5:00 p.m., and the night shift, from 4:00 p.m. to 2:00 a.m. These varying work hours led to difficulty in claimant's sleep schedule. Around this same time, claimant had moved to a home that was further away from his employer. All of these issues led to an increase in claimant's stress level.

On September 14, 2015, claimant went in for a routine medical examination. Claimant's doctor informed him that his blood pressure was very high and advised him to take some time off work in order to reduce his stress and lower his blood pressure. Later that day, claimant contacted Dekeyser, informed her of what his doctor had said, and asked her if he could take some time off work. Dekeyser advised claimant that she did not think that would be possible, but he could make the request to Robins if he wanted. Claimant then spoke to Robins, who stated he had already spoken with Dekeyser and it would not be possible for him to take any time off work.

On September 18, 2015, claimant determined that he could not continue to work in his position due to the effect the stress was having on his health. That day, he telephoned Galvin to inform her that he was resigning. Claimant did not request time off work from Galvin because his request had already been rejected by Dekeyser and Robins. Galvin asked if there was anything that could be done to prevent claimant from resigning, such as moving him to a part-time schedule or talking with Robins about his schedule. Having already spoken to Robins and being told he could not have time off, claimant stated there was nothing additional that could be done.

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. Benefits are allowed.

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.

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).

Although claimant did not have the advice of his physician to quit the employment, his physician did recommend he take some time off work to reduce his stress and lower his blood pressure. There were several factors leading to the increase in claimant's stress level, including his varying work hours, increased job duties, and a longer commute to work based on a recent move. While the employer disputes claimant's assertions regarding his schedule and job duties, it did not provide any evidence to dispute his claims. Claimant was the only witness with firsthand knowledge of his job duties and schedule during the time in question. While Galvin disputed the accuracy of these claims, she admitted she did not have firsthand knowledge regarding Dekeyser's job duties and was only able to provide claimant's scheduled hours for one two-week period in mid-August 2015. Claimant's testimony is credible.

A reasonable lay person or employer would know that increasing a person's job duties, while simultaneously requiring them to work a schedule with dramatically different hours from day to day, and denying requests for time off work, is very likely to create an intolerable strain on even an otherwise healthy worker's physical and mental health. Claimant twice tried to remedy the situation, first by talking with Dekeyser, then by talking with Robins, about the possibility of taking some time off work, but was rejected each time. It was only after these rejections that claimant felt it necessary to resign. The combination of increased job duties and varying work hours created an intolerable work environment for claimant that gave rise to a good-cause reason for leaving the employment. Benefits are allowed.

DECISION:

The December 11, 2015, (reference 01) unemployment insurance decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/css