IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

CAREY L MCNEME Claimant **ANDREWS INTERNATIONAL GOVERNMENT** Employer	**APPEAL 18A-UI-05300-DB-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 04/08/18** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the April 25, 2018, (reference 01) unemployment insurance decision that held claimant was not eligible for unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 25, 2018. Claimant, Carey L. McNeme, participated personally. Claimant's Exhibit A was admitted. Employer, Andrews International Government, did not participate.

ISSUES:

Did claimant voluntarily quit employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The facts in this matter are undisputed. Claimant was employed full-time as a security officer from June of 2017 and was separated from employment on April 2, 2018, when he voluntarily quit.

Claimant has a medical condition that requires him to take frequent bathroom breaks. Management was aware of claimant's medical condition. Claimant was required to be released from his post before taking a break. Another co-worker named Melea Kielty was the person responsible for releasing claimant from his post so that he could take a break. She worked with the claimant for approximately 1 ½ months before claimant voluntarily quit. Ms. Kielty was consistently late in releasing claimant from his post so that he could take his breaks in a timely manner. Claimant reported this issue to his supervisor, Damon Haberkon.

Ms. Kielty made a comment about the claimant to his co-workers that she was "going to figure out a way to get back at him," referring to the claimant. Ms. Kielty continued to stand behind the claimant when he was working, even after being asked not to. Ms. Kielty let persons into the building prior to a background check being completed, which made claimant's job of ensuring a safe environment inside the building difficult.

On March 12, 2018, the site supervisor, Harold Haycock, called a meeting with claimant, Ms. Kielty, and Mr. Haberkon to discuss the issues. During the meeting, Ms. Kielty alleged that the

claimant threatened to hit her. Claimant had never threatened to hit her. Ms. Kielty then admitted that she lied about claimant threatening to hit her. No discipline was issued to Ms. Kielty for any of these actions. Claimant asked to be re-assigned so that he did not have to interact with Ms. Kielty. Management refused to re-assign the claimant to a different position. Ms. Kielty continued to be late in releasing claimant from his post for bathroom breaks and continued making inappropriate comments to the claimant. Claimant believed that Ms. Kielty would continue to make false allegations against him. Ms. Kielty continues to work for the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge finds that the claimant voluntarily quit 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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). In this case, the claimant voluntarily quit his employment. As such, claimant must prove 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).

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.

Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, 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 concluded that, because the intent-to-quit requirement was added to 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. Employment Appeal Bd.,* 710 N.W.2d 1 (Iowa

2005). "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)("The good cause attributable to the employer need not be based upon a fault or wrong of such employer."). Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956). Therefore, claimant was not required to give the employer any notice with regard to the intolerable or detrimental working conditions prior to him quitting. However, claimant must prove that his working conditions were intolerable and detrimental.

It is reasonable to the average person that they should not be harassed in the workplace. It is also reasonable to the average person that they should be allowed to take bathroom breaks in a timely manner. Claimant has proven that his working conditions were intolerable and detrimental. Thus, the separation was with good cause attributable to the employer. As such, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The April 25, 2018 (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Dawn Boucher
Administrative Law Judge

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Decision Dated and Mailed

db/scn