IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

KRISTAN M HIBLER Claimant **CENTRAL AUTOMOTIVE INC** Employer	**APPEAL 22A-UI-06135-DZ-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 09/19/21** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Kristan M Hibler, the claimant/appellant, filed an appeal from the March 7, 2022, (reference 03) unemployment insurance decision that denied benefits because of a January 25, 2022 voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on May 5, 2022. Ms. Hibler participated personally. The employer participated through Mike Schropp, owner/president.

ISSUE:

Did the employer discharge Ms. Hibler from employment for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Hibler began working for the employer on November 29, 2021. She worked as a full-time office assistant. Her employment ended on January 25, 2022.

The evening of Tuesday, January 25, Ms. Hibler stayed late to help Mr. Schropp work on a machine. Ms. Hibler did this occasionally. They were using tools over and over, so Ms. Hibler put the tools on top of the toolbox after she had used them instead of putting the tools in the toolbox. Another person stopped by to help and asked for a tool. The tool was on top of the toolbox. Mr. Schropp yelled at Ms. Hibler and called her a "dumb fucking bitch." Ms. Hibler testified that Mr. Schropp also called her "retarded." Mr. Schropp admitted to using some profanity but denied that he had called Ms. Hibler "retarded." Ms. Hibler did not respond to Mr. Schropp because she was in shock and because Mr. Schropp had never called her those names before or used that tone with her. Ms. Hibler completed her work and left within about five minutes.

No customers were around when Mr. Schropp directed profanity to Ms. Hibler. Mr. Schropp testified that he was joking with Ms. Hibler. Both parties agree that employees joked with each and used profanity at work.

Ms. Hibler was scheduled to work on Wednesday, Thursday, and Friday. Ms. Hibler texted the office manager on Wednesday and told the office manager that she was not coming into work that day. Ms. Hibler did not give the office manager a reason for not attending working that day. On Thursday, Ms. Hibler texted Mr. Schropp about two-and-a-half hours after her start time and let him know that she was not attending work for the rest of the week. On Friday, Ms. Hibler told the office manager that she would not be at work that day. The office manager asked Ms. Hibler what was going on. Ms. Hibler told the office manager about Mr. Schropp yelling profanity at her on January 25, and that she was not coming back to work for the employer because of the was Mr. Schropp treated her on January 25. Ms. Hibler did not return to work for the employer

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Hibler's separation from the employment was with 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.

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 claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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). “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).

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. The Iowa 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.

Based on the above, Ms. Hibler was not required to give the employer any notice regarding intolerable or detrimental working conditions prior to her quitting. However, she must prove that her working conditions were intolerable, detrimental, or unsafe. Ms. Hibler has done exactly that.

It is reasonable to the average person that an employee should not have to work in an environment where the owner of the company directs profanity at employee. In this case, Mr. Schropp's profanity was not general profanity about a situation but was instead profanity directed at Ms. Hibler in particular. Furthermore, the profanity Mr. Schropp directed at Ms. Hibler was filled with sexist stereotypes. Ms. Hibler has proven that her working conditions were intolerable and detrimental. Thus, her separation from employment was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The March 7, 2022 (reference 03) unemployment insurance decision is REVERSED. Ms. Hibler voluntarily quit for good cause attributable to employer. Benefits are allowed, provided she is otherwise eligible.

Daniel Zeno
Administrative Law Judge
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May 31, 2022
Decision Dated and Mailed

dz/kmj