

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT M MCDONELL
Claimant

RAYMOND MARTIN RAYMOND BEVERLY
Employer

APPEAL 20A-UI-02350-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/01/20
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Overpayment of Benefits
PL 116-136 Section 2104(B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 16, 2020 (reference 01) unemployment insurance decision that denied benefits based upon him voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on April 27, 2020. The claimant, Robert M. McDonell, participated personally. Jim Duff represented the claimant. The employer, Raymond Martin, Raymond Beverly, participated through witnesses Beverly Raymond and Rick Sibole. The parties waived due notice of the potential issue of overpayment of unemployment insurance benefits pursuant to Iowa Code § 96.3(7) and overpayment of Federal Pandemic Unemployment Compensation benefits pursuant to PL 116-136 Section 2104(B). Claimant's Exhibit 1 was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

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

Is the claimant overpaid benefits?

Is the claimant overpaid Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a cashier and general laborer for the employer's shoe repair shop. He began working for this employer on May 1, 2018 and his employment ended on November 21, 2019 when he voluntarily quit. His job duties consisted of assisting customers and shining shoes. Martin Raymond and Beverly Raymond were the owners of the store and both were his immediate supervisors.

Claimant tendered a verbal resignation on November 21, 2019 when he came into the store to pick up his check. He told Mr. Raymond that he could no longer work in a toxic work

environment. Mr. Raymond yelled profanity at him and told him never to return to the shop again.

Prior to claimant voluntarily quitting, Mr. Raymond had made numerous sexual, offensive and inappropriate comments towards the claimant regarding his sexual orientation. The final incident that led the claimant to quit occurred when Mr. Raymond intentionally left women's underwear on the claimant's work station and made comments stating "wouldn't you wear them" and was laughing as he shoved them towards the claimant's face. Other comments throughout the claimant's employment made by Mr. Raymond toward him included asking him whether it hurt when he had sex, what size of penis he liked, asking him what a good cock looked like, describing Mr. Raymond's own sexual encounters with his girlfriend, making sexual references about customers to the claimant, making sexual references about a cucumber to the claimant, and calling the claimant a faggot. Claimant asked Mr. Raymond to stop his behavior on numerous occasions. He did not. Claimant asked Beverly Raymond to talk to Martin Raymond about his conduct and Ms. Raymond reported to the claimant that Martin could say what he wanted to say because he owned the shop.

Claimant had received no discipline during the course of his employment. There was continuing work available to him had he not quit.

Claimant's administrative records establish that he has received unemployment insurance benefits of \$1,055.00 from March 1, 2020 through April 18, 2020 and has also received Federal Pandemic Unemployment Compensation of \$1,200.00 from April 5, 2020 through April 18, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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).

Claimant had an intention to quit and carried out that intention by tendering his verbal resignation and leaving. As such, 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). Claimant contends that he voluntarily quit due to intolerable or detrimental working conditions.

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.

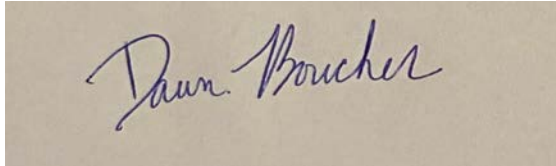
As such, if claimant establishes that he left due to intolerable or detrimental working conditions, benefits would be allowed. Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Bd.*, 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 alleged intolerable or detrimental working conditions prior to him quitting. However, claimant must prove that his working conditions were intolerable or detrimental.

Given the facts of this case, claimant has established that under the same circumstances a reasonable person would feel compelled to resign. See *O’Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). His quitting was for a good cause reason attributable to the employer. As such, benefits are allowed. Because benefits are allowed, the issues of overpayment of unemployment insurance benefits and Federal Pandemic Unemployment Compensation are moot.

DECISION:

The March 16, 2020 (reference 01) unemployment insurance decision is reversed. Claimant voluntarily quit employment on November 21, 2019 with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

April 30, 2020
Decision Dated and Mailed

db/scn