

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GINGER L MAHONEY
Claimant

APPEAL 23A-UI-09377-PT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEAVEY & HEAFEY, HOFFMAN, DWORAK
Employer

**OC: 07/30/23
Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quit from Employment
Iowa Admin. Code r. 871-24.26(4) – Quit due to Intolerable Working Conditions
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the September 27, 2023 (reference 01) unemployment insurance decision that allowed benefits based on a determination that the claimant voluntarily quit employment on July 27, 2023, due to detrimental working conditions caused by the employer. The parties were properly notified of the hearing. A telephonic hearing was held on October 19, 2023. The claimant participated personally. The employer participated through Funeral Director William Cutler IV. The administrative law judge took official notice of the administrative record.

ISSUES:

Whether claimant quit the employment with good cause attributable to the employer.
Whether claimant has been overpaid any unemployment insurance benefits, and if so, whether the repayment of those benefits to the agency can be waived?
Whether any charges to the employer's account can be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer in 2009. Most recently, claimant worked full-time as an office manager. Claimant's employment ended on July 27, 2023, when she resigned.

Claimant emailed a written resignation to the funeral director, William Cutler IV, on July 26, 2023. In her email, claimant wrote a long paragraph explaining a degrading and demeaning phone call she had with Mr. Cutler earlier that month and how his conduct had created a work environment that was detrimental to claimant's well-being. The employer accepted claimant's resignation. Continued work was available, had claimant not resigned from her position.

Claimant left the employment due to a hostile interaction with Mr. Cutler. In early July 2023, claimant received paperwork that Mr. Cutler needed to sign. Without thinking, claimant wrote on

a post-it note, "Please deliver to Billy." Claimant then gave the paperwork to another employ and asked the employee to deliver the paperwork to Mr. Cutler when he was available.

The next day, Mr. Cutler called claimant while she was on vacation with her family. Mr. Cutler had seen claimant's post-it note referring to him as "Billy" and he was furious. For several minutes with a raised voice, Mr. Cutler scolded claimant for calling him "Billy," stating that "Billy" was not his name and that she was never to refer to him as "Billy" again. Claimant apologized several times during the call, but Mr. Cutler continued to chastise claimant for her mistake. After several minutes, Mr. Cutler concluded by stating something to the effect of, "If I ever hear you refer to me as Billy again you will be fired."

After the phone call, claimant was visibly shaken and upset. No one had ever spoken to claimant in such a disrespectful manner and she felt degraded by the interaction. Prior to the phone call, claimant was unaware Mr. Cutler disliked being called Billy.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$3,130.00, since filing a claim with an effective date of July 30, 2023, for the five weeks ending September 2, 2023. The employer did not participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant quit her employment with good cause attributable to the employer. Benefits are allowed.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left the employment. *Irving v. Empl. App. Bd.*, 15-0104, 2016 WL 3125854, (Iowa June 3, 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It 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).

In this case, claimant's written resignation to the owner is both evidence of her intention to sever the employment relationship and an overt act carrying out her intention. The employer has established that the claimant, not the employer, ended the employment relationship. As such, I find that claimant quit her employment.

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 intent to quit is not required when an employee quits due to intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). Inasmuch as an employer can expect professional conduct and language from its employees, claimant is entitled to a working environment without being the target of hurtful statements and abusive name-calling.

Here, claimant has presented sufficient evidence that she voluntarily quit for good cause attributable to the employer. Claimant provided a detailed account of an incident with Mr. Cutler, wherein he angrily scolded claimant in a condescending and demeaning manner for several minutes while claimant was out with her family. Mr. Cutler treated claimant this way because claimant mistakenly referred to him as "Billy" on a post-it note. Mr. Cutler then concluded the interaction by threatening to fire claimant if she ever made the same mistake again. The administrative law judge concludes that Mr. Cutler's conduct was so excessive, unwarranted and demeaning to claimant that it created an intolerable work environment. When the business owner is the individual responsible for creating the intolerable work environment, it is difficult to conceive of a remedy other than leaving the environment entirely. Claimant has established she quit with good cause attributable to the employer. Benefits are allowed.

As benefits are allowed based on this separation, the issues of overpayment and chargeability are moot.

DECISION:

The September 27, 2023 (reference 01) unemployment insurance decision is affirmed. Claimant quit the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment and chargeability are moot.



Patrick B. Thomas
Administrative Law Judge

October 25, 2023
Decision Dated and Mailed

PBT/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.