

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIDGET KONOPASEK
Claimant

PURFOODS LLC
Employer

APPEAL 17A-UI-06038-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/14/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 6, 2017, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for dishonesty in connection with her work. The parties were properly notified of the hearing. A telephone hearing was held on June 27, 2017. The claimant participated and testified. The employer participated through Vice President of Human Resources Tracy Lewis. Employee Benefits Manager Dawn Stevens was also present on behalf of the employer but did not testify. Employer's Exhibits 1 and 2 and claimant's Exhibits A through C were received into evidence.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a human resource business partner from March 26, 2012, until this employment ended on May 10, 2017, when she voluntarily quit.

On May 10, 2017, Lewis and claimant had a meeting to discuss an ongoing investigation. The investigation began several days earlier when claimant told Lewis that a coworker, Reggie Graeve, made some inappropriate comments about his body parts in a meeting. Lewis investigated the allegations, but was unable substantiate the allegations, as no one else who was present at the meeting corroborated claimant's allegations. Claimant had first heard about the investigation from another coworker, not employed in the human resource department, the day prior and became concerned that the human resource department was not adhering to its confidentiality policy. Claimant was later approached by another coworker who apologized that he was not able to help her, explaining that he was deaf in one ear and could not hear everything that was said. This was not the first time that claimant had reported inappropriate

conduct from Graeve to the human resources department, nor was it the first time she was given reason to believe that confidentiality policy was not being followed.

Lewis testified that it was his intent to terminate claimant's employment at the end of the May 10 meeting, however; claimant resigned prior to him relaying this information. (Exhibits 1 and 2). At some point in the conversation Lewis informed claimant that her claims could not be substantiated and that he could no longer trust her. Claimant explained that the work environment is very male dominated and inappropriate sexual comments and behaviors are not uncommon. Claimant further testified that she believed it was possible her coworkers were not being honest with Lewis in an attempt to protect Graeve. Claimant's ongoing concerns with the work environment, confidentiality, and Lewis' lack of trust in her led her to resign. The day after claimant submitted her resignation she received a text message from Graeve implying he was aware that she had separated from employment and confronting her about the allegations she made against him. (Exhibit C). Following her resignation, claimant was presented with a severance agreement, which both parties signed. The employer noted it does not typically offer employees who quit severance pay, but it did so for the claimant. (Exhibits A and B).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged, but voluntarily left the employment 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.

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).

Here, claimant resigned due to intolerable working conditions following her reports of sexual harassment. The U.S. Supreme Court has held that a cause of action for sexual harassment may be predicated on two types of harassment: (1) Harassment that involves the conditioning of concrete employment benefits on sexual favors, and (2) harassment that, while not affecting economic benefits, creates a hostile or offensive working environment. *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 62 (1986).

Claimant testified her decision to resign was based partially on Graeve's behavior itself, but also on the response of the human resource department, where she was assigned to work, to her complaints. Graeve's conduct, if claimant's allegations are true, likely amounts to sexual harassment. However, the human resource department's decision to respond to claimant's allegations when they could not be substantiated by telling claimant that she could no longer be trusted, would also certainly strain their working relationship. Claimant's concerns regarding confidentiality of the human resource department also appear to be valid based on the not one, but two, coworkers approaching her to discuss the investigation while it was ongoing, with the apparent knowledge that she initiated the complaint. Claimant's concerns regarding confidentiality are further substantiated by the text message Graeve sent her following her separation from employment. It is understandable that claimant would have ongoing concerns about working in the very department or for the individuals who are supposed to protect employees who report harassment in the workplace. The conduct of the employer in this situation created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. While the employer may have been intending to terminate claimant's employment, she was not aware of this fact at the time she submitted her resignation.

DECISION:

The June 6, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was not discharged, but voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs