

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHRIS J SCHONHOFF
Claimant

APPEAL 18A-UI-07197-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PROGRESSIVE PROCESSING LLC
Employer

**OC: 06/10/18
Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code 871-24.26(4) – Intolerable Work Conditions

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated June 27, 2018, (reference 01) that held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 23, 2018. Claimant participated. Employer participated by Michael Betz, Human Resources Manager and was represented by Jackie Nolan, Hearing Representative.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on June 5, 2018. Claimant resigned from the employment on June 11, 2018.

Claimant began working for employer as a full-time RTE Room Attendant on July 8, 2015. Claimant began having problems and conflicts with a co-worker on or about May 28, 2018 after claimant made an error and missed a scale check. Claimant's co-worker became very angry at claimant and yelled at him very loudly. Claimant was shocked by the outburst, and he reported the issue to the human resources department on or about June 1, 2018.

Claimant continued having problems with the same co-worker during the next several days. The co-worker would stand and stare at claimant, and he would stand close to him and act angry at him. Claimant reported what was happening to his supervisor Jordan Cline on or about June 4, 2018. Claimant's supervisor told claimant that he would deal with the issues, and that if anything else happened he should report all harassment to him, not the human resources department.

Claimant continued having problems with being harassed by his co-worker the rest of June 4, 2018 and on June 5, 2018. The co-worker continued staring at claimant, and he would use his

middle finger to adjust his glasses when claimant would look at him. He would also scratch his face with his middle finger when the claimant was near him. Claimant could not avoid his co-worker because his work required him to work in the same area as the co-worker. The co-worker would intentionally move things around to make work difficult, and he smacked his hands together in a loud aggressive fashion while he was washing his hands which caused soap and water to fly toward claimant. Claimant reported the ongoing harassment to his manager again on June 5, 2018. Claimant was told at that time that if the manager did not see the harassment occur there was very little he could do to help.

Claimant feared for his safety at work. He began feeling ill from the stress so he called into work sick on June 7 and June 8, 2018. Claimant considered his options and decided he had to resign from the employment June 11, 2018. Claimant informed employer on that date that he was unable to return to work.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because his work environment had become intolerable.

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.

Iowa Admin. Code r. 871-24.26(3) 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:

- (3) The claimant left due to unlawful 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). 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).

Individuals who leave their employment due to disparate treatment are considered to have left work due to intolerable or detrimental working conditions and their leaving is deemed to be for good cause attributable to the employer. The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Dep't of Job Serv.*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Emp't Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

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 concluded that, because the intent-to-quit requirement was added to Iowa Admin. Code r. 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).

Claimant tried to work with employer to preserve his employment, but he continued to be harassed by his co-worker. Claimant's supervisor told claimant that he was not allowed to report harassment to the human resources office, and that if the supervisor didn't witness the harassment nothing could be done to stop it. Claimant was afraid to come into work because his work environment was intolerable, his separation from employment was for a good-cause reason attributable to the employer. Benefits are allowed.

DECISION:

The decision of the representative dated June 27, 2018, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn