

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SALLY J HECKETHORN
Claimant

APPEAL NO. 14A-UI-08311-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OPTIMAE LIFESERVICES INC
Employer

**OC: 07/20/14
Claimant: Appellant (1)**

Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Sally Heckethorn (claimant) appealed an unemployment insurance decision dated August 6, 2014 (reference 01) which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Optimae Lifeservices, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 2, 2014. The claimant participated in the hearing. The employer called in late but the hearing was in progress so the witnesses were called at approximately 10:52 a.m. The employer participated through Susan Lay, Administrative Assistant; Joanna Smith, Regional Director; and Vanessa Weller, Program Director. Claimant's Exhibits A, B, and C were admitted into evidence.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as part-time community support staff on December 31, 2009 and went full time in January 2014. She provided in-home care to individuals who are mentally challenged. The claimant continued in that capacity until her voluntary separation on July 22, 2014. She quit her employment due to medical conditions which she attributes to the bullying and harassment from her supervisor and two male co-employees, which had been ongoing for approximately a month.

The day before the claimant quit, she received a disciplinary warning for insubordination and unsatisfactory performance or conduct. The warning addressed problems from four separate days. On June 24, 2014 the claimant attended a team meeting that addressed issues taking place in the site where she worked which included employees not performing their cleaning duties and not communicating in a respectful manner. On July 11, 2014 the claimant wrote a letter to her supervisor claiming there were limited cleaning supplies, which were not that of the

customer's choice. The supervisor went to the site to evaluate the complaint and found sufficient cleaning supplies but also found many cleaning duties that had not been performed. On July 17, 2014 prior to the claimant's shift, her supervisor and regional director went to her work site to make a list of cleaning tasks that needed to be done. The supervisor and director returned to the site on the following morning and found the cleaning tasks had not been done but the claimant documented that she had completed all of the household cleaning tasks.

The claimant had received an additional written warning on February 6, 2014 wherein she was directed to work on respecting boundaries of customers, the company, and other staff. She had a lot of complaints about her co-workers and the male customer. The warning documents that she was, "still stressed out about the home thing." An additional written warning was issued on May 14, 2014 on which she needed to work on cleaning and being a team player. The claimant again had a lot of complaints about her co-workers creating drama and leaving work for her. This warning documented the check on her personal well-being as follows: "Cops being rude and bothering her and giving her a ticket for something that shouldn't have been a ticket. The guy that hit house is getting out and court date coming up. Already got her letter wrote for the court to read. Not going to get any money from him to help fix things but at least want him to have to pay for what he did court wise. Enjoying mowing the yard helps relax me and helps with exercising."

The claimant phoned her health care provider at Mercy Ottumwa Medical Clinic on June 20, 2014 after she was involved in a verbal altercation with a co-worker. She sought assistance in dealing with increased stress and anxiety. The claimant notified the medical clinic again on June 24, 2014 after participating in a second meeting regarding what she said was "ongoing concerns for her clients." She became physically ill with episodes of nausea, vomiting, and diarrhea. The clinic advised her to use over-the-counter medications for relief of symptoms. The claimant testified she was not able to get an appointment with this clinic until August 21, 2014 and reported her visit was "regarding stress at previous workplace and restless legs."

Prior to July 22, 2014 the claimant had made an appointment at Ottumwa Behavioral Health to discuss job dissatisfaction and possible harassment. She was having stomach issues, headaches, weight loss, leg cramps, and difficulty sleeping. The claimant had problems with Peggy, John, and Jody. In addition to arguing with her and creating "drama", the co-workers hid her client's snacks. The claimant was frustrated because she said the employer refused to provide her with cleaning products. After she received the written warning on the morning of July 21, 2014 she tried to go to work that night at 11:30 p.m. but became "terribly sick" and "was throwing up blood." The claimant decided she could no longer work there. She used her mother's cell phone to text her friend so that her friend would notify the employer she quit. The claimant went to her appointment at Ottumwa Behavioral Health on July 23, 2014 where she was diagnosed with adjustment disorder with anxiety.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

The claimant quit on July 22, 2014 due to medical conditions which are attributable to the bullying and harassment by her supervisor and two male co-workers. Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Florida App. 1973). The evidence provided by the claimant does not rise to an intolerable or detrimental work environment. Additionally, she testified that she left work due to medical issues that were attributable to the work environment but did not give the employer notice of her intent to quit so that the employer could try to remedy the work conditions.

A notice of an intent to quit had been 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). 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 IAC 24.26(6)(b), the provision addressing work-related health problems. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden. Benefits are denied.

DECISION:

The unemployment insurance decision dated August 6, 2014 (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

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