IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 - EI

DAN A WUBBENA
Claimant

MDH MACHINE INC
Employer

APPEAL NO. 07A-UI-06555-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/03/07 R: 01
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 20, 2007, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on July 19, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Dan Christensen participated in the hearing on behalf of the employer. Exhibits A and One were admitted into evidence at the hearing.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked for the employer as a night shift supervisor from April 12, 2004, to May 18, 2007. The employer is a parts manufacturing business in Rock Rapids.

During the course of his employment, the claimant identified numerous safety hazards in the workplace. These included using multiple-outlet electrical plugs instead of power strips, overloading electrical plugs and outlets, using frayed and cracked power cords with exposed or taped up wiring, using ungrounded power cords, using machines repaired with duct tape to cover exposed wiring, and grinders and sanders without safety guards. Employees under the claimant's supervision had received shocks from cords and equipment, but the cords and equipment were not promptly replaced or repaired. The claimant had complained to the owner, Dan Christensen, about these safety hazards on more than one occasion, but the problems were not resolved.

In April 2007, the claimant gave a month's notice that he was quitting. He told Christensen that he was tired of everything and did not want to do the work any more. The claimant did not mention safety as a reason for his quitting, but in fact it was one of the reasons why he quit. He quit working on May 18, 2007, because he wanted to get into a different line of work and believed the workplace was unsafe.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

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.

871 IAC 24.26(2) 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:
>
> (2) The claimant left due to unsafe working conditions.

Before the Supreme Court decision in Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005), this case would have been governed my understanding of the precedent established in Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The Cobb case established two conditions that must be met to prove a quit was with good cause when an employee quits due to unsafe or intolerable working conditions. First, the employee must notify the employer of the unacceptable condition. Second, the employee must notify the employer that he intends to quit if the condition is not corrected. If this reasoning were applied in this case, the claimant would be ineligible because he failed to notify the employer of his intent to quit if the unsafe working conditions were not corrected.

In Hy-Vee Inc., however, the Iowa Supreme Court ruled that the conditions established in Cobb do not apply when a claimant quits due to intolerable or detrimental working conditions by reasoning that the Cobb case involved "a work-related *health* quit." Hy-Vee Inc., 710 N.W.2d at 5. This is despite the Cobb court's own characterization of the legal issue in Cobb. "At issue in the present case are Iowa Administrative Code Sections 345-4.26(1) (change in contract for hire) and (4) (where claimant left due to intolerable or detrimental working conditions)." Cobb, 506 N.W.2d at 448.

In any event, the court in Hy-Vee Inc. expressly ruled, "notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions." Hy-Vee Inc., 710 N.W.2d at 5. The court also overruled the holding of Swanson v. Employment Appeal Board, 554 N.W.2d 294, 297 (Iowa Ct. App. 1996), that a claimant who quits due to unsafe working conditions must provide notice of intent to quit. Hy-Vee Inc., 710 N.W.2d at 6.

The court in Hy-Vee Inc. states *what is not required* when a claimant leaves work due to intolerable working conditions but provides no guidance as to *what is required*. The issue then is whether claimants when faced with working conditions that they consider unsafe are required to say or do anything before it can be said that they voluntarily quit employment with "good cause attributable to the employer," which is the statutory standard. Logically, a claimant should be required to take the reasonable step of notifying management about the unacceptable condition. The employer's failure to take effective action to remedy the situation then makes the good cause for quitting "attributable to the employer." In addition, the claimant should be given

the ability to show that management was independently aware of a condition that is objectively unsafe but has not corrected the condition to establish good cause attributable to the employer for quitting.

Applying these standards, the claimant has demonstrated good cause attributable to the employer for leaving employment. While the claimant did not inform the employer that he intended to quit if the employer failed to correct unsafe working conditions, the evidence establishes that he complained many times about safety hazards and the hazards were not fixed as of the time the claimant quit. I am convinced that safety concerns were part of the reasons the claimant quit. I also believe the safety hazards were substantial not insignificant.

DECISION:

The unemployment insurance decision dated June 20, 2007, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

_____
Decision Dated and Mailed

saw/pjs