

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN M WOOLSEY
Claimant

APPEAL NO. 11A-UI-14606-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE BON-TON DEPARTMENT STORES INC
Employer

**OC: 10/16/11
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 3, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on December 6, 2011. Claimant participated. Employer participated through Assistant Store Manager of Human Resources and Operations Shelly Jepson, Regional Loss Prevention Safety Director Jackie Carroll, and Store Manager Anna Nicolaidis. Claimant's Exhibit A (pages 1 – 12) was admitted to the record. Employer's Exhibit 1 (pages 1 – 18) was admitted to the record.

ISSUE:

The issue is whether claimant voluntarily left the employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a loss prevention manager from 2003 and was separated from employment on September 10, 2011. His last day of work was September 2, 2011. Store Manager Nicolaidis did not cooperate with claimant so he could be successful in the performance of his job, and behind closed doors without Jepson and Carroll present, Nicolaidis shook her fingers at him, rolled her eyes, and slammed papers on the desk. She also had a history of calling him names and verbally reprimanding him in front of associates on the sales floor. He sent a letter to the company CEO on April 25, 2011 complaining about how Nicolaidis treated him and various other employees. On May 5, a representative acknowledged the communication but did not give a response. (Claimant's Exhibit A, pages 3 - 5) There was no contact thereafter. Shortly thereafter, the employer began to write him up. Claimant had been warned on June 3 about having an extra computer in loss prevention area when an IT technician said they could have it and another person delivered it on May 7. (Claimant's Exhibit A, pages 1, 2, and 8) Claimant was notified on August 29 of an audit scheduled for August 31, one day before his vacation was scheduled on September 1. He worked his days off to catch up tagging, because the dock sent things out to the floor without proper tagging. Claimant had been warned on July 11 about a security sensor tagging audit on June 7 (Employer's Exhibit 1, pages 1- 4, 7, 8) when the dock manager, who was responsible for the same, and department

managers were not warned. Jepson indicated to claimant that he would be the only one responsible for the upcoming audit after claimant requested assistance through Nicholaidis and she declined to have department managers notify claimant if they needed sensor tags or if any of their department merchandise needed tags. Earlier, he had asked for enforcement assistance regarding the dock and dock manager, but that was denied as well. After claimant quit, the audit was cancelled.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with 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(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.

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. No intent-to-quit requirement was added to rule 871 IAC 24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871 IAC 24.26(6)(b) but not 871 IAC 24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

The store manager's inconsistency toward claimant in giving directives but not supplying the requisite assistance to accomplish those tasks, public reprimands, private name-calling, and disparate discipline created an intolerable work environment for claimant that gave rise to a good-cause reason for leaving the employment. Benefits are allowed.

DECISION:

The November 3, 2011 (reference 01) decision is reversed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible. The benefits withheld shall be paid to claimant.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw