

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**PAUL MCANDREWS**  
Claimant

**AMERICAN WINDOW CLEANING QC INC**  
Employer

**APPEAL 17A-UI-12883-DG-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/18/16  
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 December 7, 2017, (reference 02) that held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on January 9, 2018. Claimant participated. Employer participated by Mindy Shaw, Office Manager.

**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 October 12, 2017. Claimant resigned on that date because his work environment was intolerable.

Claimant called into work on or about September 25, 2017, and requested time off work because he had sustained injuries to his face outside of work. Claimant did provide a photo of the injuries to employer to show why he wanted time off work. Claimant explained that he felt embarrassed about what had happened to him, and that he did not want his co-worker's to see him with his face swollen and bruised.

Claimant returned to work during the latter part of September, 2017. On or about October 12, 2017, claimant discovered that his manager had taken the photo he provided employer and posted it in the conference room with a caption that stated "Most Wanted". Claimant was very upset that employer would violate his privacy and share confidential medical information with his co-workers. Claimant proffered his resignation on November 12, 2017, without giving employer advanced notice.

## 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 employer had created a hostile and intolerable work environment.

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 left the employment 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 December 7, 2017, reference 02, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

dlg/scn