**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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| **JOSHUA W HAUGLAND**<br>Claimant<br><br>**MILLER & SONS GOLF**<br>Employer | **APPEAL 17A-UI-11356-DL-T**<br><br>**ADMINISTRATIVE LAW JUDGE DECISION**<br><br>**OC: 10/08/17**<br>**Claimant: Appellant (2)** |

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 27, 2017, (reference 01) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on November 27, 2017. Claimant participated. Employer participated through owner Mark 'Skip' Miller III, and was represented by David Siegrist, Attorney at Law.

**ISSUE:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time technician through October 6, 2017. On September 21, coworker technician Gary Olson became angry with claimant because he thought claimant had received a raise. He called claimant's wife and father "lazy pieces of shit," so claimant walked out. Coworkers Doug Zule and Roger Allen were present. Jim and Skip Miller were not there at the time. Skip Miller spoke with claimant on September 25 and claimant told him about Gary's phone calls to his wife. Skip told him he was a good employee and they wanted him to return to work. Claimant agreed to finish a couple of projects over the next two weeks but did not agree to work beyond that time. Claimant worked around Gary during two days of the two weeks. Skip did not notify claimant he had instructed Gary to apologize to him.

Claimant had problems with Gary soon after he began the employment. Gary went through claimant's car and found a paystub indicating his rate of pay and shared that information with others in the small town. Skip Miller found out and told claimant to be more careful about where he put his paystubs. There was no investigation about how Gary obtained that information and told Gary that information was not his business. The problems continued when Gary would become "pissed about everything" and not speak to claimant. Gary also called claimant's wife and made comments to her about claimant's anatomy. Other calls were "oddball" calls once or twice per month. The most recent call was two months before the separation. Claimant did not

report that to either Millers or call the police. Early one morning Gary lit a large string of fireworks in claimant's driveway, waking the children and dogs.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes 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.

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:
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> **(4)** The claimant left due to intolerable or detrimental 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). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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 recently concluded that, because the intent-to-quit requirement was added to rule 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).

The U.S. Supreme Court has held that a cause of action for sexual harassment may be predicated on two types of harassment: (1) Harassment that involves the conditioning of concrete employment benefits on sexual favors, and (2) harassment that, while not affecting economic benefits, creates a hostile or offensive working environment. *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 62 (1986).

"The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). Inasmuch as an employer can expect professional conduct and language from its employees, claimant is entitled to a working environment without being the target of abusive, obscene, name-calling. An employee should not have to endure bullying or a public dressing down with abusive language directed at them, either specifically or generally as part of a group, in order to retain employment any more than an employer would tolerate it from an employee.

Employer argues that the harassment issue was not raised at fact-finding interview. IWD Appeals Bureau hearings are *de novo*, in part because the interview statements are not sworn. There is no requirement for parties to a contested-case unemployment hearing to preserve an issue at the fact-finding interview for appeal. Employer also argued that claimant returned to work so waived the reasons for the separation. Claimant did not knowingly or otherwise waive reasons for the separation or rescind his resignation. He merely agreed to work a notice-type period to finish projects out of respect for the employer.

Gary's public name-calling, release of private information, calls to claimant's wife containing sexual subject matter, and fireworks abuse created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. While the ALJ understands that Skip Miller did not know about all of Gary's misdeeds, the law as cited above does not require notice to the employer in advance of quitting for non-medical reasons that are related to intolerable and detrimental working conditions.

**DECISION:**

The October 27, 2017, (reference 01) unemployment insurance decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs