

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIELLE D MILLER
Claimant

FIRST GATEWAY CREDIT UNION
Employer

APPEAL 17A-UI-11519-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/23/17
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 31, 2017, (reference 02) unemployment insurance decision that denied benefits based on her voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on December 20, 2017. The claimant participated and testified. The employer participated through Human Resource Consultant Annette Snyder. Claimant's Exhibits A through H were received into evidence.

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 full time as a loan officer from March 10, 2014, until this employment ended on July 24, 2017, when she voluntarily quit.

In early 2017 claimant went on maternity leave. Claimant returned to work in March 2017 and was told by the Chief Financial Officer (CFO), Jim Bengston, that 26.64 hours of paid time off (PTO) would be deposited in her bank for time she accrued while on leave. On July 14, 2017, claimant was told by Bengston that he had made a mistake and she was not entitled to any PTO accrued while on leave. Bengston told claimant the hours would be removed from her bank on her next paycheck. Bengston also indicated to claimant that letters outlining the correct policy were sent to her in January 2017, though claimant denied then, and in the hearing, that she ever received those letters. Claimant was upset by this and felt as though she was being targeted and retaliated against by the Chief Operating Officer (COO), Angela Drury, for previously speaking out about issues in the workplace. Claimant further explained it was her understanding that the long standing policy was to allow employees on maternity leave to accumulate PTO and she had spoken directly to two other employees who had taken maternity leave in the last 12 months who confirmed they receives PTO deposits in their banks upon their return. Claimant sent an email to Human Resources (HR), on July 17, 2017, outlining what had happened and her concerns. (Exhibit A). Claimant received a response from Snyder on July 18, 2017, with the applicable leave of absence policies attached. Claimant acknowledged the leave policy did not provide for the accumulation of PTO while on maternity leave, but reiterated, despite what the policy said, the practice had been to allow the accumulation of PTO.

Claimant and Snyder had an extensive phone call regarding the situation, where claimant reiterated her questions and concerns and Snyder explained the policy. Claimant testified when she addressed her concerns of targeting and retaliation to Snyder, Snyder responded by dismissing the concerns and reassuring her that Drury was a very fair individual. Snyder testified that upon hearing claimant's concerns she did investigate, but her investigation consisted only of making a call to Drury, who denied the allegations. Snyder further testified she had worked with Drury a long time and trusts her.

On July 20, 2017, claimant sent a follow-up email to Snyder asking her to confirm whether other employees who received PTO while on maternity leave would have their PTO removed. Snyder responded on July 21 that she had answered claimant's questions in their prior conversation and did not think she could be any clearer. During the hearing when asked if she investigated whether other employees on maternity leave had PTO credited to their banks, Snyder admitted she had not. Snyder attributed her lack of investigation to the fact that claimant did not supply her with the names of the other employees who had taken maternity leave; though she admitted she had the ability to access this information herself. Snyder provided further testimony during the hearing indicating employees on short-term disability (STD) can be eligible to accumulate PTO. Claimant testified, due to pregnancy complications, she had actually been on STD during her leave. Snyder admitted she had not looked into whether claimant would be eligible for PTO under those circumstances, as she was not previously aware that claimant was on STD.

On July 24, 2017, claimant submitted her resignation effective immediately. (Exhibit G). Claimant explained her reasons for resigning were due to the lack of action on the issue of her PTO and her continued concern of hostility and retaliation from Drury for addressing these issues in the first place. In support of her claims that she was being retaliated against, claimant provided a written statement from another employee, Angie Lane, detailing her own hostile and retaliatory treatment by Drury. (Exhibit H). The employer further conceded it was, in fact, Drury who brought the issue of claimant's PTO to the attention of the employer. Claimant also provided a copy of a promissory note issued by the employer to herself and her husband for two pieces of real property. (Exhibit F). The terms of the promissory notes indicate monthly payments will be made on the properties beginning July 1, 2015, with a balloon payment on the balance due June 1, 2021. However, on July 24, 2017, the day claimant resigned, and August 17, 2017, claimant and her husband were sent letters from the employer calling for the balance of the loans to be paid off and set up into two separate mortgages. (Exhibits C and E).

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, regardless of the source of the individual's wage credits:

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.

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 claimant resigned after a benefit she believed she had earned and was entitled to, was taken away from her. In the absence of an agreement to the contrary, an employer's failure to pay wages, when due, constitutes good cause for leaving employment. *Deshler Broom Factory v. Kinney*, 140 Nebraska 889, 2 N.W.2d 332 (1942). Here, the issue is not in the form of monetary wages, but in paid time off. While both parties agree the employer's policies do not provide for the accrual of PTO while on maternity leave, the claimant has provided unrefuted testimony that this was not the practice of the employer. As the employer had not completed any investigation into claimant's allegations of disparate treatment on the issue of PTO, it was not able to provide any explanation as to why she may have been treated differently than her coworkers. Claimant further testified she resigned out of fear of retaliation from Drury. Claimant brought these concerns to Snyder, who summarily dismissed them without conducting any substantive investigation. Given Snyder's reaction to claimant's concerns about Drury, claimant's belief that she would continue to be targeted or retaliated against and that nothing would be done about it are reasonable. This created an intolerable work environment for claimant that gave rise to a good-cause reason for leaving the employment.

DECISION:

The October 31, 2017, (reference 02) unemployment insurance decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs