IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KRISTY K BOWMAN
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL NO. 11A-UI-08410-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/22/11
Claimant: Respondent (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 16, 2011, reference 01, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on July 21, 2011. The parties were properly notified about the hearing. The claimant did not participate in the hearing but provided a written statement in lieu of participating. Connie Sublette participated in the hearing on behalf of the employer with witnesses, Penni Hewlett and Sally Sallee. 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 from August 1, 2006, to May 25, 2011. She was hired as the store manager of the Eldridge, Iowa store. She was promoted to the position of area supervisor and worked in that position from August 1, 2008, to January 31, 2011.

The claimant stepped down as area supervisor and worked as a store manager of the Walcott, Iowa store from February 1, 2011, to May 25, 2011. The claimant's supervisor was the area supervisor, Connie Sublette.

February 3, 2011, the claimant informed Sublette about the overages and shortages in the store for the previous month and mentioned there were corrective actions that needed to taken. Sublette responded with a note stating, "I NEED YOU TO E-MAIL ME DAILY AND LET ME KNOW WHAT YOUR OVER AND SHORTS ARE AND YOU BETTER GET AFTER YOUR ASST'S." The claimant felt threatened by the email because of its tone and because she had just started as manager.

After the claimant reported some shortages and overages by her store employees, which were primarily due to customers driving off without paying for gas, Sublette informed the claimant on

February 7 that in addition to sending Sublette a daily over and short report, she would need to do an audit after every shift to determine what the problem was.

On February 10, 2011, Sublette issued the claimant a written warning for allegedly failing to send some documents to corporate headquarters by a deadline of February 8. In fact, the claimant had discovered the previous acting manager's failure to send in the documents and had sent them to corporate headquarters on February 5. Despite explaining this to Sublette, Sublette insisted on issuing the written warning with a statement "Further and more severe disciplinary action up to and including termination" would result if the claimant failed to meet expectations.

On January 21, 2011, the claimant explained in an email that she believed she had found the reason for the shortages and had terminated the employee responsible. Sublette's response was to ask if she did not understand that she "needed to do shift audits on the week-ends also??" The claimant was unaware that she was required to come in on weekends to do shift audits when she was to have weekends off, except for emergency situations, under the terms of her employment agreement. She told Sublette she could not do shift audits on Saturday, February 26, or Saturday, March 12, but her assistant manager would be able to do them on those dates. Sublette told the manager had to do the shift audits personally and a written warning was coming for failing to do weekend shift audits. The claimant protested receiving a warning for something she was unaware of and was not part of the employer's policy. Sublette responded that it was in the operations manual, but the claimant read the manual and found nothing on manager's doing shift audits on weekends.

In January 2011, while the claimant was area supervisor, she had approved a raise 30 cents per hour for an employee after reviewing the employee's job performance for the previous year. In March 2011, Sublette ordered the claimant to redo the raise documentation to reflect a 25 cent per hour raise based on the employee's recent performance. The claimant refused to change paperwork she had approved while she was the area supervisor, which was proper when it was approved.

On March 9, 2011, Sublette issued a written warning to the claimant based on alleged untimely issuance of corrective actions to employees because they were not issued immediately on the day of the performance problem but were a day or two later. The claimant refused to sign the warning because Sublette was aware of the discipline that the claimant had issued on March 5 but waited until March 9 to give her the discipline. The claimant believed Sublette's discipline was less prompt than the discipline she had issued.

On May 12, the claimant e-mailed Sublette to request vacation days on May 26 and 27 to attend her son's graduation and to leave work early to attend her son's concert on May 18. Sublette did not directly answer the claimant, but instead asked if at that time the store would be borrowing employees from other stores. The claimant replied that her staffing would be fine by the days in question. When Sublette did not respond, the claimant reasonably believed she had approval to scheduled herself off on vacation for May 26 and 27.

On May 19, the claimant prepared and posted the schedule for May 22 through June 4. She wrote on the schedule that she was on vacation on May 26 and 27. Sublette was in the store the whole day on May 23 and was with the claimant at a managers' meeting on May 24, but she said nothing to the claimant about her vacation. The morning of May 25, Sublette send an email replying to the May 12 request for vacation stating that the claimant needed to be at her store to do shift audits and cigarette audits. The claimant telephoned Sublette right away. She told Sublette she had requested the time off, had scheduled the time off, had her store covered for

the vacation days, and was not going to miss her son's graduation. Sublette responded that she was not going to approve the time off and it was final. The claimant believed Sublette's conduct toward her and specifically her refusal to allow her vacation time was unreasonable and she decided to quit due to working conditions. The claimant called and informed Sublette that she could not handle the situation anymore and was quitting.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer. The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1.

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.

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 intolerable working conditions or a substantial change in the contract of hire. First, the employee must notify the employer of the unacceptable condition. Second, the employee must notify the employer that she intends to quit if the condition is not corrected. If this reasoning were applied in this case, the claimant would be ineligible because she failed to notify the employer of her intent to quit if the intolerable 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 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 intolerable 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 or change. 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 intolerable or was a willful breach of the contract of hire 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.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant provided detailed statements that were corroborated by emails from Sublette that confirmed the information the claimant wrote in her statement.

I concluded that the conduct directed at the claimant by Sublette amounted intolerable working conditions. Specifically, Sublette's refusal to allow the claimant two vacation days for her son's graduation and notification of that decision a day before her scheduled vacation was unreasonable. The claimant had requested the time off two weeks earlier. Sublette had only raised a question about whether staffing was adequate. The claimant had her store covered. Sublette had to have known the schedule was posted with the claimant taking vacation on the days in question but said nothing until the day before the vacation. The claimant did complain to her manager about her decision and explained her position, but Sublette rejected her complaint and said the decision was final.

DECISION:

The unemployment insurance decision dated June 16, 2011, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/css