

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BECKY K BALDWIN
Claimant

MIDWEST PROVISIONS INC
Employer

APPEAL 15A-UI-00579-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 12/28/14
Claimant: Appellant (2)

Iowa Code § 96.5(1)a – Voluntary Quitting – Other Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 12, 2014 (reference 01) unemployment insurance decision that denied benefits based upon the claimant's separation. The parties were properly notified about the hearing. A telephone hearing was held on December 28, 2014. Claimant participated. Employer participated through Sherri Bathke, district manager.

ISSUE:

Did the claimant voluntarily quit 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 shift grill cook and was separated from employment on December 15, 2014 when she resigned without notice. Continuing work was available.

The claimant had a history of concerns with her employer. The month prior to her resignation, a manager, Bob, called and left a sexually graphic voicemail for her, saying something to the effect of "Hey, I saw your number and it said 'for a good time, call.' And I'm horny, so I'm calling." When the claimant played the message to her manager, Tamara, to report Bob, the claimant's manager laughed and called the message "cute." The claimant had also reported incidents of other employees calling her "stupid", "retarded" and a "liar" to her union and members of management without resolution.

The claimant continued working because she needed the job and finally quit without notice one day after she became upset when she believed her district manager accused her of lying. The claimant had reported there was no bacon on site because she had not seen any. When the bacon was located, there was an argument with her district manager who stated "don't stand there and lie to me." The claimant got upset. Given the claimant's history of ongoing issues with the employer, she walked off the job and did not return.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment with good cause attributable to the employer.

Iowa Code § 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.

Generally notice of an intent to quit is 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). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, 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 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. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

“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).

Just as an employer is entitled to expect the use of civil language from employees, an employee may expect civil treatment from their employer. In this case, the claimant made repeated efforts to notify her employer of inappropriate and harassing conduct. She reached out to her manager, who laughed at a vulgar voicemail sent to the claimant, and her union, without any resolution. She took reasonable steps to preserve her job. No employee should have to endure intimidation, physical and emotional tantrums, name-calling, and bullying behavior in order to retain employment or avoid disqualification from unemployment insurance benefits. The employer created an intolerable work environment for claimant and that behavior gave rise to a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The January 12, 2015 (reference 01) decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

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