

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMIE BURLISON
Claimant

SEABOARD TRIUMPH FOODS LLC
Employer

APPEAL 19A-UI-07228-SC

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/18/19
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On September 12, 2019, Jamie Burlison (claimant) filed an appeal from the September 9, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination he voluntarily quit employment with Seaboard Triumph Foods, LLC (employer) due to the terms of his employment which does not constitute good cause attributable to the employer. The parties were properly notified about the hearing. A hearing was held in Sioux City, Iowa on November 1, 2019 at 10:30 a.m. The claimant participated personally. The employer did not respond to the hearing notice and did not participate.

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: The claimant was employed full-time as a Machine Operator beginning on February 25, 2019, and was separated from employment on August 6, 2019, when he quit. The claimant had issues with Supervisor Pamela Miles during his tenure. On June 24, she modified the hours he actually worked and he was not paid for the time he actually worked. The claimant notified Human Resources who told him that was between him and Miles.

During his shift that started July 3, the claimant worked until 12:37 a.m. on July 4; however, Miles again changed his hours to 11:30 p.m. on July 3. The claimant again reported the issue to Human Resources and was told he would have to work it out with Miles. The claimant asked Miles about the pay issue on multiple occasions.

On August 6, the claimant and Miles were discussing the missing pay from July 3 during break. Miles told him, "I'm not fucking paying you for the time!" (Claimant's Testimony) She went on to explain Human Resources had told her it was too late to correct the inaccuracy. The claimant left that day because he was not being paid for his time worked and due to his supervisor's conduct.

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. Benefits are allowed.

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 provides, in relevant part:

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.

(4) The claimant left due to intolerable or detrimental working conditions.

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. The Iowa Supreme Court has 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).

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). "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). As an employer can expect professional conduct and language from its employees, the 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.

The claimant has met the burden of proof to establish that he was subjected to detrimental working conditions and voluntarily quit with good cause attributable to the employer. The

claimant's unrefuted testimony is that he did not receive full pay for the hours he worked because his supervisor was changing his timesheet without his permission and his supervisor used profanity in a confrontational manner when dealing with the issue. Additionally, when the claimant attempted to address the issue with Human Resources, he was not given any assistance. Accordingly, benefits are allowed.

DECISION:

The September 9, 2019, reference 01, unemployment insurance decision is reversed. The claimant voluntarily left 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn