

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THOMAS J TOULOUSE Claimant REM IOWA COMMUNITY SERVICES INC Employer	68-0157 (9-06) - 3091078 - EI APPEAL NO. 17A-UI-13367-S1-T ADMINISTRATIVE LAW JUDGE DECISION OC: 12/03/17 Claimant: Appellant (2)
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Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Thomas Toulouse (claimant) appealed a representative's December 22, 2017, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with REM Iowa Community Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 19, 2018. The claimant participated personally and through Felicia McDowell, former co-worker. The employer was represented by Roxanne Rose, Hearings Representative, and participated by Nicole Crockett, Program Director, and Angie Thomsen, Area Director.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 30, 2013, as a full-time direct support professional working third shift.

The claimant and three other co-workers repeatedly told the employer at weekly staff meetings they were being sexually assaulted by a nineteen year old client resident. The resident arrived at the employer's facility after assaulting a staff member with a shovel at another facility and being incarcerated. The employer told the employees to document the behavior in the daily behavior tracker but not to record it on the daily documentation papers.

The client grabbed the claimant's penis through his jeans and poked the claimant's anus with his fingers through the claimant's jeans. The claimant worked alone at night. The employer told the claimant he could not file a police report because the claimant needed witnesses. The employer did not offer to have another employee work with the claimant.

In June 2017, the resident hit a minor resident and rendered him unconscious. Later, the minor asked the claimant what he should do. The claimant suggested he report it to the police. The resident was arrested and placed on parole. The employer asked the claimant what business he had telling the minor to call the police.

On December 6, 2017, the resident rubbed his exposed penis across the claimant's shirt covered back. The claimant was in shock and afraid when he left work. On December 7, 2017, the claimant gave the employer his letter of resignation effective immediately.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant voluntarily quit work 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.

The law presumes a claimant has left employment with good cause when he quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that he intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. *Hy-vee, Inc. v. Employment Appeal Board and Diyonda L. Avant*, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The claimant notified the employer of the intolerable conditions and the employer was not protecting the claimant. The claimant subsequently quit due to those conditions. The claimant is eligible to receive unemployment insurance benefits, provided he meets all the qualifications.

DECISION:

The representative's December 22, 2017, decision (reference 01) is reversed. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs