IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ROBYN A ENGEN Claimant **WAL-MART STORES INC** Employer	**APPEAL 17A-UI-01729-JP-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 01/15/17** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 13, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 8, 2017. Claimant participated. Attorney Larry Woods participated on claimant's behalf. Attorney Gary McClintock registered on claimant's behalf, but he did not attend the hearing. Employer did not participate. Claimant Exhibit A was admitted into evidence with no objection.

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 cashier from November 7, 2005, and was separated from employment on January 12, 2017, when she quit.

In November 2016, claimant reported an incident involving a coworker to the employer that was causing her anxiety. Claimant was embarrassed to tell the employer about her anxiety. After claimant reported the incident, she did not believe the incident was being properly addressed by the employer. On November 10, 2016, claimant quit her employment with the employer due to an "uncomfortable work [environment] that could not be resolved[.]" Claimant Exhibit A. However, on November 11, 2016, claimant returned to the employer and asked for her job back. The employer allowed claimant to return to her job and she did not have to reapply. Claimant believed the employer just ignored that she had quit on November 10, 2016.

In December 2016, claimant met with an assistant manager and the human resources manager regarding the continuation of the hostile work environment. Claimant told the employer that the coworker had pushed her and called her derogatory names. Claimant testified this occurred on multiple occasions and was ongoing. Claimant did not believe the employer addressed the issue and the harassment from her coworker continued after the meeting. Claimant testified she does not believe the coworker was disciplined. In December 2016, after claimant reported

the incidents, the employer stopped putting claimant on the schedule. Claimant would check the work schedule and she would not be on it. Then, claimant would have to ask the employer to put her on the schedule every week. The employer told claimant that it was a computer error.

Claimant met with the employer around Christmas time regarding her global time and attendance portal record. Claimant Exhibit A. From July 2016 through November 9, 2016, claimant had four incidents of absenteeism (including leaving early). Claimant Exhibit A. However, from November 28, 2016 through December 17, 2016 (after she had reported the coworker's harassment), claimant had four more incidents of absenteeism (including leaving early). Claimant Exhibit A. Claimant explained to the employer that her coworker made her uncomfortable and nervous, which caused her anxiety and resulted in her absences.

On January 13, 2017, the store director was on the phone and said something personal about claimant's medical history. Claimant overheard the store director's statements. The store director asked what the store director could use from claimant's medical record. Claimant suffers from severe migraines and anxiety. The employer was aware of claimant's anxiety. Claimant felt threaten because the store director was talking about claimant's personal medical record. The store director then stated to write claimant off. Due to claimant's anxiety, she felt unsafe, threatened, and scared because of the store director's phone conversation. Claimant then left the employer without telling anyone even though her shift was not over. Claimant did not speak with the employer after January 13, 2017. On January 17 or 18, 2017, claimant received a certified letter from the employer that stated the employer had accepted her resignation.

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 § 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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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 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).

The employer was aware that a coworker was harassing claimant and causing her anxiety. Claimant Exhibit A. Claimant made the employer aware of the hostile work environment on more than one occasion. Claimant provided direct, first-hand testimony that her coworker continued to harass her after she reported it to the employer. Claimant credibly testified the coworker's harassment caused her anxiety issues, which she reported to the employer and caused her to miss work. The employer did not present any testimony or evidence to rebut claimant's testimony. Claimant's coworker created an intolerable work environment for her that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The February 13, 2017, (reference 01) unemployment insurance decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Jeremy Peterson
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs