

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**PARKER E ANDERSON**  
Claimant

**APPEAL 18A-UI-10039-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CUMULUS BROADCASTING LLC**  
Employer

**OC: 05/13/18  
Claimant: Respondent (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Overpayment of Benefits  
Iowa Admin Code r. 871-24.10 – Employer Participation in Fact-Finding Interview  
Iowa Admin Code r. 871-24.26 – Voluntary Quit with Good Cause

**STATEMENT OF THE CASE:**

Cumulus Broadcasting, LLC, Employer, filed an appeal from the September 24, 2018 (reference 03) unemployment insurance decision that allowed benefits because claimant, Parker Anderson, quit work with Cumulus Broadcasting, LLC due to detrimental working conditions. The parties were properly notified of the hearing. A telephone hearing was held on October 19, 2018 at 1:00 p.m. Claimant participated with his attorney, Eric Shady. Employer participated through Kellen Anderson, Hearing Representative; Jack Taddeo, Market Manager; and Kriston Fancellas, Vice President of Human Resources. No exhibits were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant's separation was a voluntary quit without good cause attributable to the employer.

Whether claimant was overpaid benefits.

Whether claimant should repay benefits and/or whether employer's account should be charged due to participation or failure to participate in the fact-finding interview.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an account executive from June 4, 2018 until his employment ended on August 3, 2018. (Claimant Testimony) Claimant's schedule was Monday through Friday from 8:00 a.m. until 5:00 p.m. (Claimant Testimony) Claimant's direct supervisor was Bernie Hobbs, Digital Sales Manager and Josh Loeffler ("Loeffler"), General Sales Manager. (Claimant Testimony)

On July 30, 2018, claimant had an altercation with Loeffler, during which Loeffler struck claimant with a closed fist on claimant's shoulder. (Claimant Testimony) Loeffler's punch hurt claimant but did not leave a bruise or mark on claimant. (Claimant Testimony) That evening, claimant

informed the operations manager of the incident; the operations manager reported the incident to Human Resources. (Claimant Testimony) From July 30, 2018 to August 1, 2018, employer investigated the incident by obtaining and reviewing statements from claimant and Loeffler. (Taddeo Testimony) Claimant did not return to work during this time. (Claimant Testimony)

On August 1, 2018, employer contacted claimant and informed him of the result of its investigation. (Taddeo Testimony) Loeffler told employer that he did have physical contact with claimant but did not consider it a punch and that he did not intend to hurt claimant. (Taddeo Testimony) Because there were no other witnesses to the incident, employer decided that Loeffler would be issued a written reprimand, that Loeffler would apologize to claimant, and that claimant would return to work and report to a different supervisor. (Claimant Testimony; Taddeo Testimony)

Claimant declined employer's offer to return to work. (Claimant Testimony; Taddeo Testimony) Claimant felt uncomfortable returning to work with Loeffler. (Claimant Testimony) Employer's Des Moines, Iowa office had approximately 30 employees working in the same building on the same floor. (Taddeo Testimony)

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed.

Iowa Code section 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). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

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 Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). Claimant provided the only direct, first-hand testimony of the incident that led to his resignation. The only other witness to the incident was Loeffler; and his testimony was not offered.

Claimant was assaulted by his direct supervisor while at work. Claimant's supervisor was issued a written warning for his file and offered to apologize. Claimant felt uncomfortable returning to a workplace, where he would continue to have contact with the person who assaulted him. Claimant is not required to notify employer of his intent-to-quit to give his employer an opportunity to cure the working conditions; therefore, claimant had no duty to exhaust other options or accept an alternative offered by the employer. Being assaulted by a direct supervisor created an intolerable work environment for claimant.

Claimant voluntarily quit his employment for good cause attributable to the employer. Benefits are allowed provided claimant is otherwise eligible. Because claimant's separation was not disqualifying, the issues of overpayment, repayment and chargeability are moot.

**DECISION:**

The September 24, 2018, (reference 03) unemployment insurance decision is affirmed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed if the claimant is otherwise eligible. The issues of overpayment, repayment and chargeability are moot.

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Adrienne C. Williamson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, IA 50319-0209  
Fax: 515-478-3528

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Decision Dated and Mailed

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