IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

LARRY D CORSO Claimant **DIAMOND CRYSTAL BRANDS INC** Employer	**APPEAL 16A-UI-10193-LJ-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/20/16** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.26(4) – Intolerable Working Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 13, 2016 (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit work because he did not like the work. The parties were properly notified of the hearing. A telephone hearing was held on October 3, 2016. The claimant, Larry D. Corso, participated. The employer, Diamond Crystal Brands, Inc., did not register a telephone number at which to be reached and did not participate in the hearing.

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, most recently as a machine operator, from July 25, 2016, until August 1, 2016, when he quit due to intolerable working conditions. Claimant's first days of employment were spent in training. Claimant was told he would be working in an air-conditioned facility.

Claimant's first day actually working in the work environment was August 1, 2016. When he arrived, he discovered the facility was not air-conditioned. Additionally, claimant indicated the employer had discovered that the product was running well at the higher temperatures, which may have led to no air-conditioning going forward. The employer also prohibited employees from bringing water onto the production floor. That night, claimant because extremely dehydrated. He was required to wear a hard hat, head netting, and additional clothing on top of his regular clothes, as this was a food production facility. Additionally, claimant described the environment as fast-paced and strenuous. Claimant testified that a number of employees were also ending employment with the employer due to these working conditions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant separated from his employment without 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). "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).

Although claimant did not have the advice of his physician to quit the employment, a reasonable lay person or employer would know that working in excessive heat in protective gear and without immediate access to water would very likely create an intolerable strain on even an otherwise healthy worker's physical health. Thus, claimant has established good cause reasons for leaving the employment. Benefits are allowed.

DECISION:

The September 13, 2016, (reference 02) unemployment insurance decision is reversed. Claimant quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

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Elizabeth A. Johnson
Administrative Law Judge

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Decision Dated and Mailed

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