IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

APRIL J BENTLEY Claimant **CASEY'S MARKETING CO** Employer	**APPEAL 17A-UI-03057-DL-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/19/17** **Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The employer filed an appeal from the March 7, 2017, (reference 01) unemployment insurance decision that allowed benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on April 12, 2017. Claimant participated. Employer participated through store manager Angie White and area supervisor. Employer's Exhibit 1 was received. Claimant's Exhibit A was received. Equifax witness Amber Niles was not available when the hearing was called (voice mail was not operable) to offer testimony about the issue of employer participation in the fact-finding interview so the administrative law judge took official notice of the administrative record, including fact-finding documents.

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 as a full-time first assistant manager through February 21, 2017. Kelly McCormick RPN diagnosed claimant with thyroidism and opined it was aggravated by stress from work. Eventually McCormick suggested claimant quit on February 20, 2017. Claimant did not notify Ridout or White allowing enough time to resolve the health issue from the employment perspective. The claimant was not aware at the time that the employer had hired more workers who were in training elsewhere.

Cashier Janet made frequent disparaging racial remarks about and towards customers to the extent that customers and coworkers complained to claimant. She passed along the complaints to store manager Ridout and added her own but he took no action and told her she had no authority to do so. She sent a written complaint to the human resource department in November 2016, but there was no response or action taken. She followed up but, again, there was no action or reply.

Claimant was injured and prescribed crutches on December 14, 2016. She presented the medical note to Ridout who scheduled her to work in standing work assignments in spite of the excuse. Ridout agreed to sedentary work at one point but still assigned her to work at the register beyond short amounts of time for which she was capable of standing. When claimant confronted him he threatened to suspend her. On January 4, 2017, he told claimant to go home and not return until she was released but called her repeatedly about when she would be released. Upon her return to work she was taken to the emergency room by ambulance with chest pains and shortness of breath, Ridout called her at the emergency room and asked her if she was returning to work that night.

Claimant submitted four requests to Ridout for work-related mileage to Indianola or Des Moines for supplies on December 10 and 24, 2016; January 21 and February 19, 2017. None were paid.

Ridout quit on February 17 while claimant was away from work and White replaced him as store manager but never worked with claimant before she submitted her resignation. Ridout left no notes regarding communication with claimant about her concerns.

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.

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

Iowa Admin. Code r. 871-24.26(2) 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:
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> **(2)** The claimant left due to unsafe working conditions.

Iowa Admin. Code r. 871-24.25 provides, in pertinent part:

> **Voluntary quit without good cause.** In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

a. Obtain the advice of a licensed and practicing physician;

b. Obtain certification of release for work from a licensed and practicing physician;

c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or

d. Fully recover so that the claimant could perform all of the duties of the job.

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). Where a claim gives numerous reasons for leaving employment the agency is required to consider all stated reasons which might combine to give the claimant good cause to quit in determining any of those reasons constitute good cause attributable to the employer. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534 (Iowa 1985).

The claimant has not presented medical evidence she was advised to quit her job and she did not give the employer notice of an intent to quit if her medical issues were not resolved. Thus, benefits are denied on this basis. However, Ridout's failure to abide by claimant's medical restrictions and limitations did give her good cause for leaving the employment due to that creating an unsafe working environment for her.

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). In general, a substantial pay reduction or 25 to 35 percent reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988).

Ridout's failure to pay work-related mileage over a period of two months also created good cause attributable to the employer for quitting the employment.

"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). Inasmuch as an employer can expect professional conduct and language from its employees, claimant is entitled to a working environment without being subject to racist tirades, 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.

Janet's racist statements to and about customers, which went unresolved by Ridout and human resources created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Thus, for the reasons outlined individually and in combination, claimant has established good cause reasons for leaving the employment.

DECISION:

The March 7, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

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