

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHELBY BROCKETT
Claimant

BURKE CLEANERS INC
Employer

APPEAL 19A-UI-05547-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/16/19
Claimant: Respondent (1-R)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On July 11, 2019, Burke Cleaners, Inc. (employer) filed an appeal from the July 9, 2019, reference 01, unemployment insurance decision that allowed benefits based upon the determination Shelby Brockett (claimant) voluntarily quit due to detrimental working conditions. The parties were properly notified about the hearing. A telephone hearing was held on August 5, 2019. The claimant participated personally. The employer participated through District Manager Patricia Dilla.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a Customer Service Representative beginning on November 30, 2018, and was separated from employment on February 25, 2019, when she quit. The claimant reported directly to Manager Judy Thompson. Between January and February of 2019, all four of the claimant's co-workers voluntarily left employment.

In the beginning of 2019, the employer had an ongoing issue with a gas leak and the associated smell. Thompson told the claimant she had called maintenance in Davenport, who inspected the site and did not find any issues. On February 14, 2019, the claimant received another customer complaint about the smell of gas. She contacted maintenance. They inspected, found an external gas leak, and it was repaired. The claimant contacted Thompson to tell her about the issue. Thompson told her, "If you want my fucking job so bad than you can fucking take it!"

The claimant had recorded the conversation and played it for District Manager Patricia Dilla. Dilla was surprised as she had not received any prior reports about Thompson's behavior. She met with Thompson at her facility and coached her about how to talk to employees.

After that meeting, Thompson would either ignore the claimant or ask her if she was going to be the next one to quit. On February 25, the claimant reported to work as normal. At some point toward the beginning of the shift, Thompson pulled out a resignation form and started badgering the claimant asking her if she was going to quit. Based on Thompson's continued behavior, the claimant decided to quit. She filled out the form and left.

The administrative record reflects that the claimant has not received unemployment benefits filing a claim with an effective date of June 16, 2019 as her claim is currently locked. The administrative record shows the only disqualifying decision for the claimant was issued in the claim year effective November 26, 2017 with regard to her separation from employer account number 573119, issued December 15, 2017, reference 02. That employer is not in the claimant's current base period. Additionally, the administrative record also shows that the claimant has earned \$6,025.00 in wages since the separation from that employer. Whether the lock on the claimant's claim is appropriate is remanded to the Benefits Bureau of Iowa Workforce Development (IWD) for investigation and, if necessary, correction.

The employer did not participate in the fact-finding interview. The employer representative scheduled to take the call was not at her desk at the time the fact-finder called. She did call the fact-finder back within 30-minutes and left a message. She did not receive a call back.

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, provided the claimant is otherwise eligible.

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 decision in this case rests, at least in part, upon the credibility of the parties. The employer did not present a witness with direct knowledge of the situation. No request to continue the hearing was made and no written statement of the individual was offered. As the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

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 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). "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, the claimant is entitled to a working environment without being the target of abusive, obscene, name-calling. An employee should not have to endure bullying or a public dressing down with abusive language directed at them, 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.

Thompson's conduct created an intolerable work environment for the claimant that gave rise to a good cause reason for leaving the employment. Thompson had used profanity toward the claimant. After the claimant reported this to the District Manager, Thompson continued to bully or berate her, asking regularly if she was going to quit. A reasonable person would find the conditions to be intolerable. Accordingly, benefits are allowed.

As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

Whether the lock on the claimant's claim is appropriate is remanded to the Benefits Bureau of IWD for investigation and, if necessary, correction.

DECISION:

The July 9, 2019, reference 01, unemployment insurance decision is affirmed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

REMAND:

Whether the lock on the claimant's claim is appropriate is remanded to the Benefits Bureau of Iowa Workforce Development (IWD) for investigation and, if necessary, correction.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn