IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

NICHOLE K HUGHES Claimant **SAC & FOX TRIBE** Employer	**APPEAL 14A-UI-12272-JCT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 11/02/14** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:
The claimant filed an appeal from the November 21, 2014, (reference 02) unemployment insurance decision that denied benefits based. The parties were properly notified about the hearing. A telephone hearing was held on January 14, 2015. The claimant participated. The employer participated through Lucie Roberts, Human Resources Director.

ISSUE:

Did the claimant voluntarily quit with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a Club Meskwaki supervisor and was separated from employment on September 28, 2014, due to a voluntarily resignation.

The claimant submitted her resignation via email to her manager, Mary Lasley, and Randy Brown. In her resignation email, she stated she was quitting due to a hostile work environment. Neither of the claimant's managers, nor human resources ever discussed the contents of the claimant's resignation letter with her. The claimant stated three incidents contributed to decision to resign.

The first incident occurred in May 2014. At this time, the claimant had requested to alter the schedule so she and other managers could rotate weekends off. The claimant's manager would not allow it and told the claimant she did not have the same amount of years' experience as the other managers. In July 2014, the claimant received her annual performance review and was unhappy with her scores. When she asked her manager if they could meet privately to discuss the scores, the claimant's manager refused. In front of other employees, her manager tried to discuss the matter and told the claimant she was not changing the scores given. Frustrated, the claimant escalated the matter to Ms. Lasley's supervisor who responded to the claimant, "Why did you sign it if you didn't agree?" The claimant was unaware not signing was an option. Besides the performance review, the claimant tried to talk to her manager's supervisor on at least three or four occasions and on each occasion, no changes were made.

In the final weeks of her employment, the claimant and Ms. Lasley had an encounter in which the claimant was frustrated. Her manager told her to she "could do what she had to do" and quit if she wanted. The claimant resigned shortly thereafter. No evidence was presented that the claimant's requests in each instance were inappropriate or that she was disrespectful to management. She followed the chain of command, and when unable to make any progress, she attempted at least twice in the last months of her employment to transfer to other departments.

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 § 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.

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).

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. 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). Mindful of the ruling in *Crosser*, *id.,* and noting that 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.

Evidence was presented that the claimant took multiple steps to address the ongoing concerns with her manager, including asking to speak with her manager directly, going to her manager's supervisor, and even attempting to transfer out of the department to remain employed. The

claimant's manager created a hostile work environment for the claimant that gave rise to a good-cause reason for leaving the employment. Benefits are allowed.

DECISION:

The November 21, 2014, (reference 02) unemployment insurance decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible, and the benefits withheld shall be paid.

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Jennifer L. Coe
Administrative Law Judge

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Decision Dated and Mailed

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