

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSHUA A JOHNSON
Claimant

JOHNSON DECONSTRUCTION
Employer

APPEAL 15A-UCX-00007-DGT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/15/14
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated May 26, 2015, (reference 01) that held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 11, 2015. Claimant participated. Employer participated by Zack Johnson, President.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 7, 2015. The parties had discussed increasing claimant's pay an extra dollar an hour on or about April 24, 2015. That increase was to begin on or before May 1, 2015. Claimant had not received the agreed upon raise in pay as of May 8, 2015.

On or about May 8, 2015 employer called claimant, and yelled profanity at him. Employer asked claimant "what the fuck he was doing?" and was very frustrated with claimant's work performance at that time. Claimant decided he should submit his resignation because he was not able to tolerate his work-place environment. His resignation became effective immediately.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because he did not receive an agreed upon raise, and employer yelled profanity at him.

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(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

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). 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 Iowa Admin. Code r. 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).

Individuals who leave their employment due to disparate treatment are considered to have left work due to intolerable or detrimental working conditions and their leaving is deemed to be for good cause attributable to the employer. The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Dep't of Job Serv.*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Emp't Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

There was no disqualifying basis for not paying claimant the agreed upon raise in pay. That coupled with the employer yelling profanity at claimant created a detrimental work environment, and the quit was therefore with good cause attributable to the employer. Benefits are allowed.

DECISION:

The decision of the representative dated May 26, 2015, (reference 01) is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/pjs