

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

LISA A HARGROVE
Claimant

APPEAL NO. 16A-UI-09367-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHARPLESS AUCTION INC
Employer

OC: 08/07/16
Claimant: Appellant (2)

Iowa Code section 96.5(1) – Voluntary Quit for Good Cause Attributable to the Employer

STATEMENT OF THE CASE:

Lisa Hargrove filed a timely appeal from the August 23, 2016, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on agency conclusion that she had voluntarily quit on August 9, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on September 14, 2016. Ms. Hargrove participated and presented additional testimony through Don Dickey and Doug Hobbs. Brad Ahlvers represented the employer.

ISSUE:

Whether Ms. Hargrove's voluntary quit was for good cause attributable to the employer. It was.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lisa Hargrove was employed by Sharpless Auction, Inc., as the full-time Front Desk Supervisor until August 8, 2016, when she voluntarily quit in response to the employer's racist remark. Ms. Hargrove had begun her employment in 2013 as a front desk employee and was soon thereafter promoted to Front Desk Supervisor. Ms. Hargrove's immediate supervisor was Brad Ahlvers, Manager/Building Director. Mark Sharpless is the business owner.

The employer begins each work day with a morning meeting to discuss the day's business. At the morning meeting on August 8, 2016, Mr. Sharpless engaged in a discussion with the assembled staff regarding Atalissa bar that for was sale. Ms. Hargrove was present at the meeting. The employer's business was not involved in the sale of the bar, but Mr. Sharpless was interested in the matter. During the discussion, Mr. Sharpless uttered the comment, "There's gotta be a nigger in the woodpile somewhere." The room went silent in response to Mr. Sharpless' utterance. All present, including Mr. Sharpless, were aware that the comment was racist and inappropriate. All present, including Mr. Sharpless, were aware that Ms. Hargrove's husband was an African-American man and that Ms. Hargrove's children were biracial people. Ms. Hargrove submitted her resignation later the same day. Ms. Hargrove attempted to keep her resignation as professional as possible and omitted reference to or repetition of the employer's offensive utterance. Mr. Sharpless had uttered other similar racist

remarks during the course of Ms. Hargrove's employment. Ms. Hargrove had previously asked the employer not to use such language in her presence.

REASONING AND CONCLUSIONS OF LAW:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

Ms. Hargrove's voluntary quit was for good cause attributable to the employer. The employer's August 8 racist utterance was patently offensive, as indicated by the responses of those present to hear it. A reasonable person would not be surprised that Ms. Hargrove would be highly offended, hurt, embarrassed, or humiliated by the racist remark. The evidence in the record establishes that the employer had previously subjected Ms. Hargrove and other staff to similar racist utterances. The employer continued to make racist comments well after Ms. Hargrove had asked the employer to desist. The business owner's utterances created intolerable and detrimental working conditions for Ms. Hargrove. Ms. Hargrove is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The August 23, 2016, reference 01, decision is reversed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs