IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

MARSHAWN RUSH
Claimant

YELLOWBOOK INC
Employer

APPEAL NO. 18A-UI-00414-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/03/17
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Marshawn Rush (claimant) appealed a representative's January 4, 2018, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Yellowbook (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 5, 2018. The claimant participated personally. The employer participated by Maria Gaffney, Human Resources Generalist.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 18, 2016, as a full-time telephone client services consultant. On March 6, 2017, the claimant became a part-time worker. The claimant signed for receipt of the employer's Code of Ethics. The Code of Ethics has a zero tolerance policy regarding harassment of employees.

The claimant had been diagnosed with Ehlers-Danlos syndrome and could not perform some of his work duties. On September 26, 2017, his doctor provided him with work restrictions. The employer accommodated those restrictions. Throughout his employment the claimant reported situations to the employer where he felt harassed by co-workers. The employer told the claimant to turn his cheek.

In August 2016, the claimant was talking to his supervisor during a break about music. A female co-worker interrupted the conversation and asked what they were talking about. When the conversation turned to hip hop music, the worker said, "I will slap the black off you". The employer terminated the worker for her comment.

In 2016, the claimant was sick and fainted at work. A co-worker told him she hoped he was feeling better. She heard he was dehydrated from drinking too much Kool-Aid. Later she

apologized. The worker said other employees said the claimant was drinking Kool-Aid and not drinking water. The claimant never drank Kool-Aid. Due to his condition, he always drank water.

On May 20, 2017, an employee told the claimant he should change the name of his team to Bébé's Kids. There were four black workers on the claimant's team. The claimant complained to the employer. The employer placed the employee on a warning.

In May 2017, a co-worker told the claimant that he did not deserve to be at the company, his IQ was low, and he was dumb. The co-worker said he could beat him at anything. The supervisor heard this, saw the claimant was upset, and let the claimant go home early. The claimant reported the behavior to other supervisors and to the human resources generalist. The claimant asked the human resources generalist to have the company say something at the regular meetings about being fair to co-workers. The human resources generalist did not think this was a reasonable request.

Nothing happened with the claimant's suggestion. Two months later the claimant asked the human resources generalist about his request to have fairness addressed at a company meeting. He said that all he asked was a reminder for people to be nice. She asked him if he sent her an e-mail on this issue or if there was another situation that had arisen since May 2017. He said there was not. She told him if there was something new that came up, he should speak with his manager. He did not contact her in the future.

Also in the spring of 2017, a female co-worker offered the claimant a ride to Chick-fil-A to pick up something to eat. A male co-worker, the female co-worker's boyfriend, tried to run the car off the road. He punched the car window beside the claimant and said, "Get out of the car, nigger". All of this happened in the employer's parking lot. The claimant saw the male co-worker in the hallway and said, "I'm sorry. I don't want any problems". The co-worker became aggressive and started yelling, "Get the fuck out of my face".

The claimant was afraid of the male co-worker and reported his actions to the employer. The employer made jokes about it and did not issue a reprimand to the co-worker. The co-worker stared at the claimant every day and sent him e-mails. The claimant asked the employer to please stop the e-mails and the employer stopped them. The claimant was frightened every day at work. His medical condition made his bones brittle and he was afraid the co-worker would hurt him.

On November 14, 2017, the claimant walked into work. The assistant manager made a raise the roof gesture and said "What's up?" rather than saying hello. The claimant complained to his supervisor.

On November 21, 2017, the claimant gave the employer two weeks' notice of his resignation. He told the employer he was quitting because he was unable to perform all of his work duties and because he was harassed at work. He was still being stared at by the co-worker who threatened him. The claimant worked through December 5, 2017. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant voluntarily quit work with good cause attributable to the employer.

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 law presumes a claimant has left employment with good cause when he quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that he intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. *Hy-vee, Inc. v. Employment Appeal Board and Diyonda L. Avant*, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The claimant notified the employer of many incidents of harassment at work. The claimant continued to work with a co-worker who stared at him every day, intimidated him, and tried to hit him through a car window. The claimant subsequently quit due to those conditions. The claimant is eligible to receive unemployment insurance benefits, provided he meets all the qualifications.

DECISION:

The representative's January 4, 2018, decision (reference 02) is reversed. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs