IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

CHRIS A ROUILLARD Claimant **CATERING BY MARLIN'S INC** Employer	**APPEAL 15A-UI-00277-JCT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 12/14/14** **Claimant: Appellant (2)**

Iowa Code § 96.5(1)a – Voluntary Quitting – Other Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 5, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the claimant's separation. The parties were properly notified about the hearing. A telephone hearing was held on February 2, 2015. The claimant participated. The employer participated through Renee Woods, payroll/human resources.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to 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 cook and was separated from employment on December 12, 2014, when she resigned. Continuing work was available.

The claimant resigned without notice to Doug, the district manager, on December 12, 2014. Prior to the claimant's resignation, the claimant had reported to the owner, her district manager, and two corporate managers who covered her store about ongoing concerns for the year leading to her separation. The claimant reported that her peer, Rhonda, was cussing her out. When she told corporate, they said Rhonda should be warned if it happened again, but she was never disciplined. The claimant's manager was recovering from a heart attack and when he returned, he scolded the claimant for not being loyal and telling corporate. The claimant had also contacted her manager's supervisor on more than one occasion because he would get in her face and scream at her, and clench his fists, knowing she had post-traumatic stress disorder, and that this would upset her. The district manager did not intervene. The final issue that arose was the claimant's co-worker, Joanne, sending her an email on her personal account, with her co-workers also being included, and telling the claimant that everyone was against her. The claimant reached out to Doug, her manager's supervisor, for guidance and after two days, had not heard back from him, and so she called and resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her 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.

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.

Generally notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, 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 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. Employment Appeal Bd.,* 710 N.W.2d 1 (Iowa 2005).

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).

At the time of separation, the claimant had notified three different management members of ongoing concerns about her treatment in the work place. In light of her concerns, the claimant was trying to continue her employment. Just as an employer is entitled to expect the use of civil language from employees, an employee may expect civil treatment from their employer. The language of her peers, combined with the manager's unnecessary and insensitive provocation in light of knowing the claimant had a medical condition amounted to intolerable working conditions. No employee should have to endure intimidation, belittlement, embarrassment, yelling, or bullying behavior in order to retain employment or avoid disqualification from unemployment insurance benefits. Thus, the separation was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The January 5, 2015 (reference 01) decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Jennifer L. Coe
Administrative Law Judge

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Decision Dated and Mailed

jlc/pjs