

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS H COX
Claimant

APPEAL NO. 10A-UI-09921-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMBRANDT ENTERPRISES INC
Employer

OC: 06/13/10
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 9, 2010 (reference 01) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on August 30, 2010. Claimant participated. Employer opted not to participate but offered exhibits in lieu of testimony. Exhibit D-1 was admitted to the record.

ISSUE:

The issue is whether claimant voluntarily left the employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time in animal husbandry from July 2006 and was separated from employment on June 10, 2010. He had complained to his supervisor about the ammonia fumes from chicken waste that was not properly exhausted. OSHA visited in March or April 2010 and the employer began to run the fans to exhaust inside air but would not normally since the birds do not eat as much feed when the air is hot. Supervisor Mike Mannus instructed the claimant to “stay up here to make things look good” working only near the front of the barn where the exhaust fans were located so the ammonia monitor he wore would have a lower level reading than if he performed his regular duties sweeping further back in the barn and checking the waste pit for leaks. The air conditions worsened again after OSHA left the work site. Claimant also had ringworm three times in the last year since new owner took over from Golden Oval in April 2009. There was also increased dandruff from the birds because Rembrandt Enterprises, Inc. added two more birds to every cage for a total of at least nine birds per cage so he could literally see the particles hang in the air inside the barn. Mannus told him this was the way the new owner wanted the facility to operate. Husbandry manager Dave Hannsmeyer said the same thing and his lungs “could not take it” so he quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the 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.

871 IAC 24.26(2), (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:

(2) The claimant left due to unsafe working conditions.

(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 chicken dander and waste ammonia fumes are reasonably considered industrial pollution in the claimant's worksite, which became worse under Rembrandt's management practices and created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The July 9, 2010 (reference 01) decision is affirmed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs