

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALAN M HIRTE
Claimant

MERSCHMAN FURNITURE INC
Employer

APPEAL 19A-UI-08387-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/29/19
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the October 17, 2019 (reference 01) unemployment insurance decision that denied benefits based upon him voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on November 15, 2019. The claimant, Alan M. Hirte, participated personally. The employer, Merschman Furniture Inc, participated through witness Donna Pieper.

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:

Claimant was employed full-time as a sales person and delivery person in the employer's furniture store. He began working for this employer on August 21, 2016 and his employment ended on September 27, 2019. He was paid hourly. His immediate supervisor was Donna Pieper. Mrs. Pieper and her husband own the store.

In September, the store began having a retirement sale in order to liquidate assets for the owners' retirement. The pricing structure of the items at the store changed and many of the prices of items at the store were increased from what they were prior to the sale. However, the tags in the store and advertisements stated "sale" on them. The claimant was frustrated with the new sales team that was put in place because he did not interview with them when he was first hired, they were from out of the State of Iowa, and they were only there for the sale.

On September 27, 2019, claimant gave his verbal notice of his intent to resign due to the new pricing structure the store was using. Claimant believed that the employer was engaging in deceit of customers by increasing prices and stating that the items were "on sale". Claimant did not agree with this behavior. Claimant voluntarily quit his employment after Ms. Pieper told him that the new sales team would continue to run the sale in this manner.

Claimant's job duties and hourly rate of pay did not change during the retirement sale. There was continuing work available to claimant had he not quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.

Claimant had an intention to quit and carried out that intention by tendering a verbal resignation. As such, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)("The good cause attributable to the employer need not be based upon a fault or wrong of such employer."). Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956).

Claimant contends that he voluntarily quit due to intolerable and unethical working conditions. Claimant alleged this was because the prices of the furniture stated "sale" when the furniture was not actually on sale and was higher than before the sale.

Iowa Admin. Code r. 871-24.26(3) 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:

- (3) The claimant left due to unlawful working conditions.

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.

As such, if claimant establishes that he left due to intolerable or detrimental working conditions, benefits would be allowed. 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 Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Bd.*, 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 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).

In this case, claimant did give the employer notice of his intent to quit prior to quitting. However, claimant must also establish that he quit due to unlawful, intolerable or detrimental working conditions. The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). Under the reasonable belief standard, it is not necessary that the employer violated the law, only that it was reasonable for the employee to believe so. *Id.* at 662.

In this case, the employer had marked items stating that they were "on sale" when the claimant knew that they had previously been marked with lower prices before the sale. However, an employer has a right to price items it sells at the price point it chooses. A reasonable person would not have believed that the employer was engaging in illegal business practices. This case more aligns with the fact that the claimant did not like the working environment with the new sales team in place because they were not from the State of Iowa and only there for the sale.

Iowa Admin. Code r. 871-24.25(21) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(21) The claimant left because of dissatisfaction with the work environment.

The claimant's voluntary quitting was not for a good-cause reason attributable to the employer according to Iowa law. As such, benefits must be denied.

DECISION:

The October 17, 2019 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount after his separation date, and provided he is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn