

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PENNY J SCOTT
Claimant

CID SKY CAPS LLC
Employer

APPEAL 15A-UI-06348-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/10/15
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 29, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on July 7, 2015. The claimant participated. The employer participated through David Kaufmann, Owner.

ISSUE:

Did the claimant voluntarily leave the employment with good cause attributable to the 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 sky cap and was separated from employment on March 17, 2015.

The claimant worked at the airport full time (should this have hyphen like the part-time?) for the employer and also worked part time at the airport for another company at the information desk. On March 17, 2015, the claimant arrived to work in her sky cap uniform and realized she had been scheduled to work both jobs from 2:00 to 9:00 p.m. The claimant saw there were five other sky caps working so she left without requesting permission and went to work at the information desk job. She scratched her name off the schedule for that shift only. Mr. Kaufmann saw her during the shift at one point sitting at the information desk in her sky cap uniform, but did not inquire.

After this shift, the claimant and the owner had a confrontation, when the claimant returned to attempt and perform work. The employer told the claimant she voluntarily quit when she clocked in for the employer and left the shift without permission to go work her other job. The claimant stated “no, I was coming back to you.” The employer was unhappy with the claimant based on her leaving the shift, and the fact she and two co-workers had a pending lawsuit against Mr. Kauffman for a failure to pay overtime wages. Mr. Kauffman offered the claimant the ultimatum of dropping her lawsuit if she wanted to remain employed, and she voluntarily quit without notice.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without 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(3) & (13) 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.

(13) A claimant who, when told of a scheduled future layoff, leaves employment before the layoff date shall be deemed to be not available for work until the future separation date designated by the employer. After the employer-designated date, the separation shall be considered a layoff.

Before the Supreme Court decision in Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005), this case would have been governed by my understanding of the precedent established in Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The Cobb case established two conditions that must be met to prove a quit was with good cause when an employee quits due to intolerable working conditions or a substantial change in the contract of hire. First, the employee must notify the employer of the unacceptable condition. Second, the employee must notify the employer that she intends to quit if the condition is not corrected. If this reasoning were applied in this case, the claimant would be ineligible because she failed to notify the employer of his intent to quit if the intolerable working conditions were not corrected.

In Hy-Vee Inc., however, the Iowa Supreme Court ruled that the conditions established in Cobb do not apply when a claimant quits due to intolerable or detrimental working conditions by reasoning that the Cobb case involved "a work-related health quit." Hy-Vee Inc., 710 N.W.2d at 5. This is despite the Cobb court's own characterization of the legal issue in Cobb. "At issue in the present case are Iowa Administrative Code Sections 345-4.26(1) (change in contract for hire) and (4) (where claimant left due to intolerable or detrimental working conditions)." Cobb, 506 N.W.2d at 448.

As a result, the court in Hy-Vee Inc. expressly ruled, "notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions." Hy-Vee Inc., 710 N.W.2d at 5. The issue then is whether claimants when faced with working conditions that they consider intolerable or a change in the contract of hire that they consider substantial are required to say or do anything before it can be said that they voluntarily quit employment with "good cause attributable to the employer," which is the statutory standard.

Logically, a claimant should be required to take the reasonable step of notifying management about the unacceptable condition or change. The employer's failure to take effective action to remedy the situation then makes the good cause for quitting "attributable to the employer." In addition, the claimant should be given the ability to show that management was independently aware of a condition that is objectively intolerable to establish good cause attributable to the employer for quitting. However, in this case, the owner, whom arguably, was at the top of management, was the individual creating the potential intolerable conditions, which limits the claimant's opportunities to remedy the condition at hand. Regardless of the outcome or circumstances of the claimant's unrelated lawsuit, the owner's holding the claimant job status hostage in exchange for her dropping her lawsuit against him/his company was intolerable and unacceptable response to the claimant leaving her prior shift without notification. The claimant should not be required to waive a substantial legal right in response to missing her shift in order to continue employment. Applying these standards, the claimant has demonstrated good cause attributable to the employer for leaving employment. Mr. Kauffman's treatment of the claimant was objectively intolerable, and the claimant should not be required to dismiss her right to pursue legal action in exchange for job security. The leaving was effectively involuntary and was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The May 29, (reference 01), decision is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/mak