IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

HEIDI A HANSEN
Claimant

RANDY L SORENSEN
IRWIN LOCKER & CATERING
Employer

APPEAL NO. 08A-UI-02837-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/17/08 R: 02
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Leaving
871 IAC 24.26(4) – Intolerable Working Conditions

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 12, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on April 7, 2008. Claimant participated. Employer participated through Randy Sorensen, butcher, Debra Rasmussen, owner and manager, Merle Bettcher, and Danny Thompson.

ISSUE:

The issue is whether claimant quit the employment without 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 was employed as a full-time meat wrapper from November 2006 until February 12, 2008 when she quit. Her immediate supervisor Sorensen has a bad temper and throughout her employment threw meat hooks (not at her but in the area where she was working, kicked meat hooks and tubs, and called her "stupid," "worthless" and "lazy." On February 11 Sorensen became irate and threw packages of meat around and his ill temper continued the next morning over a piece of machinery that had been broken for a few days. By lunch, claimant was "scared and angry" and called Rasmussen from home and told her she was quitting because of Sorensen's temper. Just as she had before when claimant complained about Sorensen's temper tantrums, Rasmussen minimized the issue saying he was having "a bad day." Rasmussen has told claimant earlier in the employment that Sorensen has treated her poorly and she and others believe he has bipolar disorder. Coworker Sandy' McDonald quit the same day but has since returned to work. Sorensen referred to her return saying, "She was real good about it and did not file for unemployment." Bettcher testified he was "busy trying not to cut his fingers" so he was "not paying attention" to what was going on. Thompson initially testified he did not hear communication between Sorensen and claimant on February 11 or 12 but later said Sorensen was treating her as he had in the past and denied that he told her "when he talks to you like that it doesn't even make you feel human does it?"

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.

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 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. EAB*, 462 N.W.2d 734 (Iowa App. 1990).

Just as an employer is entitled to expect the use of civil language from employees, an employee may expect civil treatment from their employer. Given McDonald's decision to quit the same day in spite of her subsequent return to work, Thompson and Bettcher's tentative testimony, and Rasmussen's admission of Sorensen having a "bad day," claimant's testimony is considered credible. No employee should have to endure intimidation, physical and emotional tantrums, name-calling, and bullying behavior in order to retain employment or avoid disqualification from unemployment insurance benefits. Sorensen created an intolerable work environment for claimant and that behavior gave rise to a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The March 12, 2008, reference 01, decision is affirmed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs