IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

TERESA A ENGDAHL Claimant **J & D RESTAURANTS 2 INC** Employer	**APPEAL NO. 18A-UI-08437-B2T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 07/22/18** **Claimant: Appellant (1)**

Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 6, 2018, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 29, 2018. Claimant participated. Employer participated by Emma Sells.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 29, 2018. Claimant left in the middle of her shift on that day and did not return or contact employer for the next week, missing four additional shifts. Employer took this as a voluntary quit. Claimant stated that she wished to speak with a member of management, and as she was being ignored, she decided that she shouldn't return to work until her concerns had been addressed.

Claimant expressed multiple stresses she endured at work. Claimant had a co-worker that had bothered claimant on multiple occasions, with one of those occasions involving physically touching claimant. Employer sent the co-worker home on the first occasion when she insulted claimant. On the second occasion, where the co-worker grabbed claimant's shoulders, employer asked claimant to write down her statement as to the incident which occurred. Claimant stated that she didn't want to do so, knowing that the statement would cause the co-worker to be terminated. Claimant stated that the third incident occurred when the co-worker shared uncomfortable personal sexual tales when claimant shared with the co-worker that a male co-worker made her uncomfortable. Employer stated that claimant never shared this incident with employer, so they could not address it.

Claimant also expressed separately that she was uncomfortable with a male co-worker who she said leered at her on a daily basis. Claimant stated that she would move a garbage can over in her area such that the male co-worker wouldn't stare at her when she leaned over. The other co-worker with whom claimant had a problem asked claimant about the can, and claimant explained why she put it where she did. This prompted the other co-worker to launch into

sexual stories about the other co-worker, and her own sexual exploits as mentioned above. Claimant shared this with employer, and employer met with the co-worker. Claimant stated that the co-worker was behaving better the last few weeks before claimant ended her employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1 provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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. 871-24.25(4) 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 section 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 section 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:
>
> (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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 section 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 section 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 administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because employer didn't address claimant's most recent concerns when she attempted to bring them to members of management.

Ordinarily "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code Section 96.2. *O'Brien v. EAB* 494 N.W.2d 660, 662 (Iowa 1993) (citing *Wiese v. IA Dept. of Job Serv.,* 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the test of good faith." *Wiese v. IA Dept. of Job Serv.,* 389 N.W.2d 676, 680 (Iowa 1986). "Common sense and prudence must be exercised in evaluating all of the circumstances that led to an employee's quit in order to attribute the cause for the termination."

Id. "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). In the instant case, claimant on multiple occasions presented employer with different complaints she had about two of her co-workers. The employer addressed the concerns when raised. With regards to the female co-worker, employer stated that they would terminate her for her inappropriate touching as long as employer was able to secure the written statement from claimant as to what happened. (This would be reasonably requested by employer to protect themselves in the event of an unemployment or wrongful termination claim brought by the other co-worker.) Claimant declined to do this, then brought up the events in her unemployment hearing as reasons for her quit. The administrative law judge will not give a great deal of weight to the complaints which could have led to the co-worker's job separation when the claimant chose not to pursue those complaints. Additionally, claimant had raised the complaint about her male co-worker. Employer addressed this situation with the male co-worker, and claimant stated that things had gotten better after the co-worker had been warned, with the co-worker no longer leering at claimant.

Claimant's quit then came down to claimant's desire to talk with a manager or owner about other, unspecified concerns. The member of management did not acknowledge claimant's requests in a timely manner, according to claimant. Claimant stated that she'd attempted to speak with this different manager, and had left a message for the person to return her call, and claimant decided that she would not return to work until the manager had returned her call. That, she explained, was why she didn't return to work after leaving for lunch and why she didn't call or show for her next four shifts when she was scheduled. The administrative law judge does not find that the lack of a timely returned phone call by management constitutes good cause for claimant to quit her employment. Claimant's no-call/no-show for work is appropriately termed a quit by employer. Said quit disqualifies claimant from the receipt of unemployment benefits until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

DECISION:

The decision of the representative dated August 6, 2018, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Blair A. Bennett
Administrative Law Judge

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Decision Dated and Mailed

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