

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY L HOWELL
Claimant

APPEAL NO. 11A-UI-10592-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BORGHI USA INC
Employer

OC:07/03/11
Claimant: Appellant (5)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated August 3, 2011, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 26, 2011. Claimant participated. Employer participated by Amanda Randall, human resources director; Brian Owens, second shift supervisor; Mike Adams, supervisor; and Kevin Eid, line worker. The employer was represented by Brent Ruther, attorney at law. The record consists of the testimony of Tammy Howell; the testimony of Kevin Eid; the testimony of Brian Owens; the testimony of Mike Adams; the testimony of Amanda Randall; Claimant's Exhibits A through D; and Employer's Exhibits 1 through 4.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures oil hydraulic conduits. The claimant has worked for the employer on two occasions. Her most recent stint began on April 18, 2010. Her last day of work was July 1, 2011. She voluntarily quit her job on July 5, 2011.

The series of events that led to the claimant's quitting her job began on May 25, 2011. The claimant worked on the second shift in the shipping department. The claimant had a difficult working relationship with another employee named Kevin Eid. Approximately two weeks before May 25, 2011, the supervisor, Brian Owens, had a meeting with the employees in an effort to address concerns about harassment and working together as a team. Mr. Eid felt that the claimant was constantly "on his back" about the job and the claimant felt that she was harassed by Mr. Eid.

On May 25, 2011, the claimant and Mr. Eid got into an argument. Mr. Eid told the claimant to go fuck herself and walked away. The claimant threatened to punch Mr. Eid in his fucking mouth and said that he had no right to tell her that. The two were separated by Brian Owens. Mr. Eid admitted that he lost his cool and he apologized to the claimant the next day. The claimant's response was: "Whatever."

Mr. Owens did what he could to separate the claimant and Mr. Eid at work by assigning them to do a single separate task in a shift where contact between them would be minimal. The claimant felt that the employer should take some action against Mr. Eid. On June 8, 2011, the claimant sent a registered letter to the employer complaining about a hostile work environment. A meeting then took place on June 9, 2011, to address the claimant's letter. The claimant asked for a transfer to another department. The employer told the claimant that she would be transferred to the first available job that became open.

The first job opening that became available was on third shift. The claimant was informed on June 23, 2011, that she would be transferred to third shift effective July 1, 2011. (Exhibit D) The claimant did not want to work third shift. Amanda Randall told the claimant she would check to see if another permanent job was available. None were. The claimant was informed that she would be transferred to third shift.

The claimant was supposed to report for work for the third shift on July 5, 2011. This meant that she was to show up for work at 11:00 p.m. on July 4, 2011. The third shift ran until 6:00 a.m. The claimant did show up for work for the second shift shipping on July 5, 2011. Mike Adams told her that she was no longer a second shift warehouse worker and that she was supposed to report for third shift. The claimant left and did not come in for third shift and did not report the next day. On July 7, 2011, the employer sent the claimant a letter that stated she was considered to have abandoned her job. (Exhibit D)

The employer has a written policy that stated that "any employee absent from work more than two days without notifying the company will be considered to have voluntarily quit." (Exhibit D)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in this case is uncontroverted that it was the claimant who initiated the separation of employment. The claimant was asked why she was no longer employed and her response was: "I guess I quit." The much more difficult issue in this case is whether the claimant voluntarily quit with good cause attributable to the employer.

Testimony from all of the witnesses established that there was an argument between the claimant and Kevin Eid, another employee, on May 25, 2011. Mr. Eid admitted that he told the claimant to go fuck herself. The claimant responded that she was going to punch him in his fucking mouth and that he could not talk to her like that. Based on the testimony of the witnesses and the reasonable inferences drawn from that testimony, the administrative law judge concludes that the heart of the dispute was whether the claimant was entitled to direct and criticize Mr. Eid's job performance. The claimant seemed to feel that she was in charge of operations in the warehouse and that she was responsible for deciding how things should be done. Mr. Eid did not share her feelings and neither

did management of the employer. There appears to have been ongoing tension on just what role the claimant could and should play in warehouse operations.

Mr. Eid should not have said what he did to the claimant, but the claimant likewise should not have threatened to punch him. Both parties lost their cool, to use Mr. Eid's words. The claimant felt that Mr. Eid should have been disciplined and, in fact, he was. Although the claimant was evasive when asked exactly what discipline should have been meted out, the most reasonable inference is that she felt he should have been terminated. The claimant clearly was the party that requested a transfer to a different job. She did not want to stay and work it out with her co-worker. Ms. Randall and Mr. Adams both testified that the claimant's attitude became a problem. The employer offered the claimant the first available position. The claimant did not want to work third shift and apparently felt that she could dictate the job she would do for the employer.

The administrative law judge concludes that the claimant elected to quit her job rather than work third shift. She had asked for a transfer and it was the employee's practice to transfer to the first position that became available, which was on third shift. The administrative law judge understands why the claimant may not have wanted to work third shift, but she was the one who requested the transfer from the shipping department and she was responsible, at least in part, for the negative working environment that was created in the shipping department. Accordingly, the claimant is deemed to have voluntarily quit without good cause attributable to the employer. Benefits are denied.

The representative concluded that the claimant was disqualified because of misconduct due to excessive unexcused absenteeism. Although the disqualification remains in place, the decision is modified to show that the claimant voluntarily quit without good cause attributable to the employer.

DECISION:

The representative's decision dated August 3, 2011, reference 02, is modified without effect. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw