

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HOLLY A HOWARD**  
Claimant

**WIGGS INC**  
Employer

**APPEAL NO. 10A-UI-16817-LT**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 08/29/10**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(1) – Voluntary Leaving

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 7, 2010 (reference 03) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on January 27, 2011. Claimant participated. Employer participated through managers/owners Carrie Bainbridge and Bill Bainbridge.

**ISSUE:**

The issue is whether claimant voluntarily left the employment with 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 most recently worked full time as a clerk/donut maker from October 5, 2010 and was separated from employment on November 5, 2010. Her ex-boyfriend, who had a history of stalking and abuse, showed up at her workplace on her first day of work. She went to the back room and called the police who told him not to be on the property when she is working. Later that night he stabbed her boyfriend in the face with an ice pick. He was charged with willful injury and criminal proceedings. It was the employer's impression he would be in jail or prison indefinitely but he spent a week in jail and was released on \$10,000.00 bond pending trial. Carrie Bainbridge told her to go in the backroom if he showed up again and call the police so they could catch him on the property with her. On October 29 he showed up but said and did nothing. On October 30 he appeared twice and coworker Brenda called the police at 4:10 p.m. but no one responded. At 6:30 p.m. the police line was busy and he was gone by the time the police arrived. After he left she called Bill Bainbridge who became angry and told her she could not keep someone off the property.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the 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) 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.

A notice of an intent to quit had been 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). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871 IAC 24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871 IAC 24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871 IAC 24.26(6)(b) but not 871 IAC 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). Where claimant was required to work in two separate positions and received contradictory instructions from two different supervisors and quit after being reprimanded for his job performance was entitled to benefits. *McCunn v. EAB*, 451 N.W.2d 510 (Iowa App. 1989).

The employer's inconsistent instructions about what to do if the claimant's stalker appeared at work and its failure to cooperate with claimant to involve the police, especially knowing the stalker stabbed claimant's boyfriend, created an unsafe work environment for her as well as any bystander customers or coworkers that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

**DECISION:**

The December 7, 2010 (reference 03) 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

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