

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY M HAMMONS
Claimant

APPEAL NO. 11A-UI-04488-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

**OC: 02/27/11
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Fareway Stores, Inc. filed a timely appeal from an unemployment insurance decision dated March 28, 2011, reference 01, that allowed benefits to Amy M. Hammons. After due notice was issued, a telephone hearing was held May 2, 2011 with Ms. Hammons participating. General Counsel Garrett Piklapp participated for the employer. Claimant Exhibit A was admitted into evidence.

ISSUE:

Did the claimant leave work with good cause attributable to the employer?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Amy M. Hammons was employed as a part-time cashier by Fareway Stores, Inc. from October 2, 2006 until she voluntarily resigned March 1, 2011. On the evening of February 19, 2011 a picture of the claimant's personal vehicle parked next to the vehicle of her store manager at the store manager's apartment complex was posted on the Facebook page of Danielle Kollasch, the wife of assistant store manager Ryan Kollasch. Text accompanying the photograph insinuated that Ms. Hammons was engaged in an inappropriate relationship with the store manager. The entry was photo tagged to other Fareway employees. Ms. Hammons knows Mrs. Kollasch only through Mr. Kollasch.

The photograph was taken down on the following day after Ms. Hammons complained. On February 21, 2011 Ms. Hammons asked the store manager for a meeting with the two of them and Mr. Kollasch. The meeting was not set up because corporate management would not allow it. Ms. Hammons then submitted a written two-week notice of resignation.

On February 27, 2011 Ms. Hammons received a text message on her phone that read, "I know you fuck for money....I have lots. When are you meeting me again." A second text message read "[you] the city whore." Ms. Hammons conducted a reverse phone search and found that the text messages came from a cell phone registered in the name of Mr. Kollasch. She reported

the incident to the police. After an investigation, simple misdemeanor harassment charges were filed against Mrs. Kollasch. After working on March 1, 2011, Ms. Hammons announced that she would not work the rest of her two weeks.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant left work with good cause attributable to the employer. It does.

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.

An individual who resigns because of intolerable or detrimental working conditions leaves work with good cause attributable to the employer. See 871 IAC 24.26(4). The employer argued that since Mrs. Kollasch was not an employee of Fareway that her actions could not be attributed to the employer. The employer, however, had no evidence contradicting Ms. Hammons' testimony that she knows Mrs. Kollasch only through her husband, the assistant manager. The employer did not counter the testimony that the Facebook post had been photo tagged to company employees. The employer argued that the text messages from Mr. Kollasch's cell phone should not be considered since Ms. Hammons had already submitted her two-week notice. This argument fails to take into account the fact that Ms. Hammons was still working for the employer at the time of those text messages.

The great weight of evidence indicates that Ms. Hammons was subjected to this behavior because of her employment relationship with Fareway stores. Given the gravity of the incidents, the fact that corporate management denied the claimant's request for a face-to-face meeting with the assistant manager and because the incidents continued even after the submission of the notice of resignation, the evidence establishes the claimant resigned because of intolerable or detrimental working conditions. Benefits are allowed.

DECISION:

The unemployment insurance decision dated March 28, 2011, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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