

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCENA P HICKS

Claimant

APPEAL NO: 12A-UI-04281-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION

Employer

OC: 12/25/11

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Schena P. Hicks (claimant) appealed a representative's April 4, 2012 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Whirlpool Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 8, 2012. The claimant participated in the hearing. Carrie Jaster appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on April 4, 2008. She worked full time as an assembler at the employer's Amana, Iowa facility, working on a 3:30 p.m. to 12:00 a.m. schedule. Her last day of work was February 24, 2012. She voluntarily quit on that date.

For about the last month of her employment the claimant had been having some difficulties with a coworker. He would taunt her by saying he needed a "stick" – a part – which the claimant was supposed to be providing to him, when in fact he already had the part and did not need another one. He would also occasionally repeatedly say her name while waving one of the parts. On one occasion in about the first week of February this coworker was saying to the claimant that he needed a "stick" when the group's supervisor was in the area. The claimant believed the coworker did this to make her look bad in front of the supervisor. The supervisor walked over and looked at the coworker's work and saw that he did not need a "stick," but he did not say anything to either the claimant or the coworker. The claimant later complained to her team leader that the coworker was trying to make her look bad, and the team leader said she would

speak to the coworker. It is unknown if the team leader did speak to the coworker, but the claimant assumed she did not, as the coworker continued to repeat the conduct about every other day. The claimant did not speak about the matter again to the team leader, and did not speak about the matter to the supervisor or to anyone in the human resources department. There was no evidence that the supervisor saw anything going on between the claimant and the coworker other than on the one occasion the first week of February.

Before the 7:30 p.m. break on February 24 the coworker had again been repeatedly saying the claimant's name and waving one of the parts. She decided that she could not tolerate the behavior anymore, but rather than going to a team leader, the supervisor, or the human resources department, she decided to quit. She told a team leader that she was leaving, but did not give the true reason why. She then left the facility and did not return.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a coworker is not good cause. 871 IAC 24.25(21), (6). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (FL App. 1973). Rather, her complaints do not surpass the ordinary tribulations of the workplace.

Further, the claimant did not take the necessary steps to make her reason for quitting attributable to the employer. While a claimant does not have to specifically indicate or announce an intention to quit if her concerns are not addressed by the employer, for a reason for a quit to be "attributable to the employer," a claimant faced with working conditions that she considers intolerable, unlawful or unsafe must normally take the reasonable step of notifying the employer about the unacceptable condition in order to give the employer reasonable opportunity to address his concerns. *Hy-Vee Inc. v. Employment Appeal Board*, 710 N.W.2d 1 (Iowa 2005); *Swanson v. Employment Appeal Board*, 554 N.W.2d 294 (Iowa 1996); *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). If the employer subsequently fails to take effective action to address or resolve the problem it then has made the cause for quitting "attributable to the employer." Under this logic, if in the alternative the claimant demonstrates that the employer was independently aware of a condition that is clearly intolerable, unlawful, or unsafe, there would be no need for a separate showing of notice by the claimant to the employer; if the employer was already aware of an obvious problem, it already had the opportunity to address or resolve the situation. The fact that the claimant's supervisor may have seen one incident of the

coworker taunting the claimant in early February does not establish that the supervisor was aware that the conduct had not been isolated. The claimant said something to one team leader, but then merely assumed that the team leader had not addressed the coworker; she did not take the issue beyond the team leader to the available resources. The claimant did not provide the employer with the necessary notice of a potentially intolerable situation to provide a reasonable opportunity for the employer to address the situation to resolve the matter. The claimant has not satisfied her burden.

DECISION:

The representative's April 4, 2012 decision (reference 02) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of February 24, 2012, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs