

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICIA K KEPHART**  
Claimant

**APPEAL NO. 14A-UI-03225-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RISEN SON CHRISTIAN VILLAGE**  
Employer

**OC: 02/16/14**  
**Claimant: Appellant (1)**

Section 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated March 13, 2014, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on April 16, 2014. The claimant participated. The employer participated by Ms. Michelle Miller, Laundry/Housekeeping Supervisor and Ms. Debra Weihs, Human Resource Director.

**ISSUE:**

At issue is whether the claimant left employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Patricia Kephart was employed by Risen Son Christian Village from August 28, 2013 until January 8, 2014 when she quit her job by failing to report for scheduled work for three consecutive workdays without notifying the employer. Ms. Kephart was employed as a part-time laundry/housekeeping aide and was paid by the hour. Her immediate supervisor was Michelle Miller.

Ms. Kephart left her employment with Risen Son Christian Village because of an incident that had taken place on approximately December 24, 2013 with another laundry aide. On that date, Ms. Kephart and the other female laundry aide were apparently joking and bantering. During the bantering Ms. Kephart, in a play-like motion, wiggled the anterior portion of her body at the other laundry aide, and the other laundry aide in turn, briefly touched Ms. Kephart in a slapping or rubbing motion. The parties had previously engaged in similar jocular activity.

Although Ms. Kephart was upset by the most recent incident, she did not immediately bring the matter to the attention of her employer. The claimant waited until January 3, 2014 and at that time mentioned the matter to the facility's human resource director. The human resource director immediately contacted the claimant's supervisor, Ms. Miller.

After being informed of the incident, Ms. Miller met with both the elder aide and Ms. Kephart independently to address Ms. Kephart's complaint. Disciplinary action was issued to the other worker and the other worker was warned to discontinue the conduct. Ms. Miller met with

Ms. Kephart to inform the claimant that the employer would take appropriate action against the other laundry aide. After the January 3, 2014 meeting was concluded, Ms. Kephart did not again report for scheduled work. The claimant had been told by another worker that “nothing would happen.” Therefore, it appears that Ms. Kephart concluded that she did not want to return to her employment. After the claimant had failed to report for scheduled work and had provided no notification to the employer on January 8, January 10 and January 11, the employer concluded that Ms. Kephart had relinquished her position with the Christian Village.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause attributable to the employer. It does not.

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.

In general a voluntary quit requires evidence of 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 608, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). A voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. In this matter Ms. Kephart demonstrated her intention to sever the employment relationship by refusing to return to available employment for three or more consecutive scheduled days without notifying the employer of the reason.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6(2). An individual who voluntarily leaves their employment must first give notice to the employer of the reason for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). Claimants are not required to give notice of intention to quit due to intolerable, detrimental or unsafe working environments if the employer had or should have had reasonable knowledge of the condition. Hy-Vee v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005). ). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993).

The administrative law judge concludes in this case that the claimant left employment on January 3, 2014, the same day that she had reported a previous incident to her employer. The claimant did not allow the employer sufficient time before leaving employment to address or resolve her complaint. The evidence in the record establishes that the employer acted reasonably and immediately to warn the other employee that such conduct was prohibited and would not be tolerated. The incident alleged by Ms. Kephart appears to be an isolated instance of badgering or joking with a sexual connotation and the evidence establishes that the employer acted immediately to resolve the claimant's complaint. It appears that Ms. Kephart relied upon the advice of another hourly employee who had no frame of reference and had no knowledge of what action the employer might have taken or did take.

While Ms. Kephart's reasons for leaving may have been good-cause reasons from her personal viewpoint, they were not good-cause reasons attributable to the employer. Therefore, unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated March 13, 2014, reference 01, is affirmed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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