

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIELLE C BIRKY
Claimant

APPEAL NO. 10A-UI-09421-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURLINGTON BASKET CO
Employer

OC: 01/31/10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated June 22, 2010, reference 01, which denied benefits based upon her separation from Burlington Basket Co. After due notice, a telephone hearing was held on August 18, 2010. Claimant participated personally. The employer participated by Mr. Chris Thompson, CEO.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Danielle Birky was employed by Burlington Basket Company from September 17, 2002 until May 19, 2010 when she voluntarily quit employment. Ms. Birky worked as a full-time data entry worker and was paid by the hour. Her immediate supervisor was Chris Thompson.

Ms. Birky left her employment with the Burlington Basket Company on May 19, 2010 following a telephone dispute with her supervisor about whether the claimant would be authorized for two days' layoff that week. Ms. Birky had been absent on Tuesday and Wednesday of that week and had failed to call in to properly report her impending absence on the morning of Wednesday, May 19, 2010. The claimant had been told previously by her employer that she would be needed that Wednesday and had indicated that she would try to report. When the claimant did not report and did not provide notification, a telephone conversation between the claimant and her supervisor ensued. Claimant initially disputed the requirement that she call in that day indicating that she believed she had been "laid off." The verbal exchange escalated and Chris Thompson indicated claimant would be written up after she referred to him as an "ass."

The telephone conversation continued between the claimant and Mr. Thompson's father, Rick Thompson. Rick Thompson confirmed to the claimant that she could not draw unemployment

insurance benefits if she were ill and reiterated to the claimant that her services were needed at work that week. The conversation ended with Rick Thompson disconnecting.

After considering the matter the remainder of the day, Ms. Birky decided to resign her position and did so at 4:00 p.m. via e-mail. She resigned due to dissatisfaction about the telephone conversations and general dissatisfaction with changes being implemented by the company.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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 voluntarily leaves their employment must first give notice to the employer of the reasons 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). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991). Claimants are not required to give notice of their intention to quit due to intolerable, detrimental or an unsafe work environment if the employer should have had reasonable knowledge of the condition. Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005).

In this case the evidence establishes that Ms. Birky left her employment due to a dispute with her employer about whether she would be on lay-off status for the remainder of the week of May 15, 2010. The claimant had not worked on Tuesday of that week and had not reported on Wednesday although she had indicated to the employer that she would make an effort to do so. The claimant's absence was compounded by her failure to provide notification of her impending absence that day. The claimant left her employment after a verbal argument had ensued via telephone about the claimant's expectation that her absence on that Wednesday and the remainder of the week should be categorized as a layoff. The employer in turn expected the claimant to report for the remainder of the week as work had not been completed due to the claimant's absences that week. During the verbal exchange emotions on both sides became escalated and rough language was used. The evidence establishes that it is not unusual for rough language to be used in the place of employment on occasion. In determining whether a quit is due to intolerable or detrimental working conditions, the test as to whether an individual has good cause attributable to the employer for leaving employment is not a subjective test as to whether that employee themselves thought they had good cause but an objective test as to whether a reasonable person would have quit under similar circumstances. Based on the evidence in the record, the administrative law judge concludes that the working conditions were not intolerable or detrimental.

Inasmuch as the claimant did not give the employer sufficient notice that she was considering quitting because of the scheduling dispute or the manner in which it was handled by the employer, the separation was without good cause attributable to this employer. Benefits are denied.

DECISION:

The representative's decision of June 22, 2010, reference 01, is affirmed. The claimant left employment without good cause attributable to the employer. 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 meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs