

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHYLLIS M JENKINS
Claimant

APPEAL NO. 09A-UI-09525-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLYING J INC
Employer

**Original Claim: 05/24/09
Claimant: Respondent (2/R)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Flying J, Inc. (employer) appealed a representative's June 24, 2009 decision (reference 01) that concluded Phyllis M. Jenkins (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant voluntarily quit her employment for reasons that qualify her to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 20, 2009. The claimant participated in the hearing. Dru Rigby, the district manager, and Heather Write, the assistant district manager, 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 her employment for reasons that qualify her to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer in March 2008. The claimant worked full-time as the general manager of a plaza. The claimant and Rigby knew one another before the claimant started working for the employer.

Prior to April 7, 2009, there had been several times the claimant's inventory shrinkage or waste exceeded the employer's allowable two percent. The employer talked to her about her shrinkage percent, but had not given her any written warning about this problem. On April 7, 2009, the employer gave the claimant a written warning for again having inventory shrinkage of more than two percent. The warning informed the claimant that if the next inventory was again over two percent, disciplinary action would be taken, which could include termination. The claimant considered the warning a threat to her continued employment.

Either shortly before or after the claimant received the April 7 warning, she told Rigby's and Write's supervisor about problems with clearance items. The claimant followed Write's instructions about the clearance items and told the supervisor about this. The claimant believed that after she talked to upper level management, Rigby and Write retaliated against her by

veiled negative comments about her job or her job performance. The claimant felt tenseness between herself and Rigby after she reported problems to upper level management. After making this report, the claimant no longer felt she could admit her mistakes to Rigby and concluded Rigby talked to her in a harassing tone of voice.

On April 10 after Rigby tried to make a comment letting the claimant know she should leave work behind her and have a good time on her week's vacation, the claimant took his remark as a threat and broke down crying. The claimant talked to Rigby's supervisor a second time and reported that she believed Rigby started harassing her after she made her first complaint and she was thinking about quitting if his harassment did not stop. The supervisor talked to Rigby and reminded him to treat everyone equally. After this second report, the claimant felt Rigby forced himself to be nice to her.

On May 26, the claimant and Write started the inventory at 5:30 a.m. By 7:30 p.m., the inventory showed shrinkage of three percent. The claimant asked Write if this meant she was discharged. Write explained that she did not have the authority to make that decision and Rigby would talk to her when he returned from vacation. The claimant asked Write to contact Rigby so she would know what was going on with her employment. Write contacted Rigby and they decided that based on the long day Write and the claimant already had, Write would meet the next morning to discuss the results of the inventory. Write told the claimant she would talk about the inventory results and about an attitude adjustment for the claimant the next day. The claimant then decided she had been harassed enough the last two months and walked out. The claimant did not return to work again, because she decided she had enough and quit on May 26. When the claimant left on May 26, the employer had not made a decision about her continued employment.

The claimant established a claim for benefits during the week of May 24, 2009. The claimant has filed for and received benefits since May 24, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code § 96.6-2.

The law presumes a claimant quits with good cause when she leaves because of intolerable working conditions. 871 IAC 24.26(4). The law also presumes a claimant voluntarily quits without good cause when she leaves after receiving a reprimand. 871 IAC 24.26(28).

The facts establish the claimant felt threatened after she received the April 7 written warning because she had not controlled her inventory to a level that resulted in a two percent or less shrinkage. Since her inventory shrinkage had not met the employer's standard of two percent or less for several months prior to the April 7 written warning, her assertion she received the warning because she reported problems to upper level management is not supported by the evidence.

After the April 7 warning, the claimant realized her job was in jeopardy. Communication between the claimant and Rigby became strained and disintegrated. Even though the claimant took his vacation remark as a negative personal "dig" at her, the evidence does not support this conclusion. After the April 7 written warning, the claimant made conclusions Rigby harassed her by the tone of his voice. After the written warning, the claimant took comments personally

and concluded Rigby mentioned problems because he was harassing her instead of bringing to her attention an issue that needed to be addressed. Even though during the last 45 day of her employment the claimant sensed a great deal of tension, the facts do not establish that the employer harassed her or that she worked under intolerable working conditions.

On May 26 after the claimant knew her inventory shrinkage percent was more than allowable two percent, she quit before the employer made a decision about her continued employment. The claimant assumed the employer would discharge her because she again had not met the employer's allowable shrinkage percent. The claimant quit on May 26 for personal reasons. Her reasons do not, however, qualify her to receive benefits. As of May 24, 2009, the claimant is not qualified to receive benefits.

Since the claimant has received benefits since May 24, the issue of overpayment will be remanded to the Claims Section.

DECISION:

The representative's June 24, 2009 decision (reference 01) is reversed. The claimant voluntarily quit her employment for personal reasons that do not qualify her to receive benefits. The claimant did not establish she quit because of intolerable working conditions. The claimant is disqualified from receiving unemployment insurance benefits as of May 24, 2009. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw