

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CATHERINE DONOVAN**  
Claimant

**APPEAL NO: 14A-UI-12050-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**METAL TECH INDUSTRIES INC**  
Employer

**OC: 10/26/14**  
**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 18, 2014, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on December 11, 2014, and continued on January 7, 2015. The claimant participated in the hearing with Attorney Whitney Judkins. Jason Miller, Director of Manufacturing; Paul Reighard, Factory Maintenance; Steve Love, General Labor Production; Troy Wildt, Production Laborer; and Joe Longobardi, President; participated in the hearing on behalf of the employer. Claimant's Exhibits A through C and Employer's Exhibits One through 13 were admitted into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Metal Tech Industries from October 24, 2012 to October 31, 2014. She voluntarily left her employment because she felt she was being harassed.

Around January 2013 the claimant accused Factory Maintenance worker Paul Reighard of hiding her paperwork with her job instructions that were to be handed in upon the completion of each job. She believed he took her paperwork when she left the area to get packing materials. She stated the paperwork would then show up approximately one hour later.

Later in January 2013 the claimant asked Mr. Reighard if she could use the forklift he typically used and he said he needed it but a short time later the claimant's co-worker, Troy Wildt, asked to use the forklift and Mr. Reighard allowed him to do so even though the claimant indicated Mr. Reighard had not used it to do the task he said he needed the forklift for. The employer stated the claimant could not see Mr. Reighard's work area from her work area.

The employer did not have assigned parking but the claimant complained on numerous occasions that Mr. Reighard was harassing her about parking. In January 24, 2014, she complained he was in the parking lot with his foot on the brake and the gas pedal of his vehicle, revving the engine and throwing gravel at her car. There was no damage to her vehicle. She also accused Mr. Reighard of parking too close to her car on a few occasions.

The claimant's car leaked oil and anti-freeze and the employer placed a piece of cardboard under her car to catch the leaking liquids. The employer power-washed the parking lot one day and put orange cones in front of some parking spots, including the space the claimant usually parked in and the claimant took that personally and blamed Mr. Reighard. When Mr. Reighard would leave work during the day the claimant often left her work station to move her car to his vacated parking spot even knowing he was returning.

Earlier in the week of May 2, 2013, the claimant complained to Director of Manufacturing Jason Miller that co-worker Jose Beltraine made sexually harassing comments to her including, "Can the girls come out and play" and that he could "bend her over a table." Mr. Miller told her she was right to notify him of the situation and he would talk to Mr. Betraine and let him know his comments were not acceptable and any further conduct of that nature would result in further disciplinary action (Employer's Exhibit Eight). Later that day Mr. Miller spoke to Mr. Beltraine about his sexual comments to the claimant and issued him a verbal warning (Employer's Exhibit Eight). He told Mr. Beltraine that type of conduct would not be tolerated and would result in termination if it continued (Employer's Exhibit Eight). Mr. Miller then talked to the claimant and told her he had addressed the issue with Mr. Beltraine and she should let him know immediately if it happened again (Employer's Exhibit Eight). Mr. Miller than spent more time on the floor to monitor the situation and asked the other women on the floor if they were experiencing similar issues and told them to inform him if they did (Employer's Exhibit Eight). The claimant contends Mr. Miller did not conduct an investigation and nothing changed with regard to Mr. Beltraine. The employer's documentation shows the claimant then volunteered "nearly 50 times after this incident to work with (Mr. Beltraine) on overtime in 13 months. At Metal Tech typically two people will work together on the one assembly line that is scheduled for overtime" (Employer's Exhibit Four).

Production Laborer Troy Wildt started working for the employer in approximately January or February 2013. On July 15, 2013, Mr. Wildt told Mr. Miller that if the employer did not do anything about the claimant's actions he was going to quit his job (Employer's Exhibit Four). Mr. Wildt told the employer the claimant was stacking her pallets in front of his work area, using tools that he was going to need, and doing other things he felt were designed just to annoy him (Employer's Exhibit Nine). Mr. Wildt was visibly upset and asked to speak to President Joe Longobardi. A meeting was scheduled with Mr. Miller, Mr. Longobardi and Mr. Wildt present. The employer allowed him to "vent" (Employer's Exhibit Four). At the conclusion of the meeting the employer told Mr. Wildt it would investigate the incidents he complained of and let him know their findings and that he should return to work and try to avoid the claimant (Employer's Exhibit Four).

The employer then met with the claimant and allowed her to vent about Mr. Wildt's actions. She stated Mr. Wildt threw her pallets to the side. The next morning he told the claimant that if she put her pallets in his area again she would be "eating them." She started to cry during that meeting with the employer and Mr. Longobardi told her that was okay to cry as "people deal with anxiety in different ways. Some people raise their voice, some people clam up and some people cry" (Employer's Exhibit Four). The claimant believed Mr. Longobardi's comments were sexist in nature. The employer told the claimant it would look into the situation further but she should return to work and avoid Mr. Wildt.

During the following three working days Mr. Miller talked to both parties and allowed them to talk to him about the situation (Employer's Exhibit Four). He also asked each if they would be willing to make changes (Employer's Exhibit Four). On July 18, 2014, the employer held a meeting with the claimant and Mr. Wildt with Mr. Miller and Mr. Longobardi in attendance as well (Employer's Exhibit Four). The claimant testified the employer left her and Mr. Wildt in the room alone for a few minutes, which made her uncomfortable, but after they discussed their issues, and talked about mutual respect, their working relationship improved and they were able to work together following that meeting.

During the employer's investigation of the issues between the claimant and Mr. Wildt the claimant accused Mr. Wildt of sending her an inappropriate picture by text in the past (Employer's Exhibit Ten). She also stated he sent the picture to Cindy Uhlenburg (Employer's Exhibit Ten). Mr. Miller asked her if she kept the picture and she stated she had not (Employer's Exhibit Ten). Mr. Miller then spoke to Ms. Uhlenburg and asked if Mr. Wildt had sent her the picture and she stated she had not received any pictures of any kind from Mr. Wildt (Employer's Exhibit Ten). Mr. Miller asked Mr. Wildt if he sent the claimant a picture and he denied doing so (Employer's Exhibit Ten). Mr. Miller told the claimant she could block calls from Mr. Wildt if she choose to do so and that she needed to keep any inappropriate pictures sent in the future so the employer could act but without any evidence there was not anything the employer could do at that time (Employer's Exhibit Four). Consequently, the employer determined the claimant's allegation was false (Employer's Exhibit Ten).

On October 8, 2014, the claimant lost consciousness at work and Mr. Miller and co-worker Jon Fischer tried to revive her (Employer's Exhibit 12). An ambulance was called but the claimant refused further medical attention stating she had experienced fainting spells since childhood (Employer's Exhibit 12). Mr. Miller and Mr. Fischer drove the claimant home to Eldora, which is approximately 20 miles away from the employer's location, and Mr. Fischer filled her car with gas and paid for it out of his own pocket (Employer's Exhibit Four). Mr. Miller texted the clamant to see if she got home okay but the claimant did not respond to his text message. The claimant provided a note from her doctor October 9, 2014, stating she could return to work that day (Employer's Exhibit Four). The claimant told Ms. Uhlenburg she had not told her doctor about her condition because she did not want to lose her driver's license as could happen if she was experiencing seizure-like issues.

On October 22, 2014, the claimant reported Mr. Reighard threw garbage on her car October 22, 2014. Mr. Reighard did not work on that date (Employer's Exhibit Four).

On Friday, October 24, 2014, the claimant was assigned to work in the packaging area (Employer's Exhibit Four and Exhibit 11). Around 8:45 a.m. she left her work area and entered the work area of co-worker Steve Love, who was working with Mr. Reighard, and began yelling at Mr. Love about "spreading rumors" that she left work the previous day because of him, a charge Mr. Love denied (Employer's Exhibit Four). The claimant then left and went back to her work area before returning to where Mr. Love and Mr. Reighard were working and yelled at Mr. Love a second time and asked him why he did not like her (Employer's Exhibit Four). Mr. Love stated he did not like her work ethic and stated she "spent more time trying to look busy then actually being busy" (Employer's Exhibit 11). Mr. Reighard asked the claimant to go back to her work area and stop yelling at Mr. Love. She left but returned a short time later and asked Mr. Reighard why he did not like her and he stated it was because she was "annoying." The claimant began yelling at Mr. Reighard using profanity and stating he was not her boss. Mr. Reighard told the claimant to return to her work area or go to the office if she wished to complain further. The claimant replied, "You are not my fucking boss." Mr. Wildt went to the

office to speak to Mr. Fischer because Mr. Miller was out of the office and asked Mr. Fischer to come to the production floor to address the issue. Mr. Miller returned and he went to the floor to investigate the situation. Mr. Miller spoke to the claimant and asked her what happened. She stated Mr. Love had “turned against” her because he had been listening to Mr. Reighland and because she did not know why they disliked her she wanted to ask them why (Employer’s Exhibit 11). She told Mr. Miller she yelled at Mr. Love and Mr. Reighard but stated she gets emotional and that affects her health (Employer’s Exhibit 11). The claimant told Mr. Miller she had brought Mr. Reighard’s harassment of her to Mr. Miller’s attention several times but he did not do anything about her complaints (Employer’s Exhibit 11). She indicated she was treated differently because she was a woman (Employer’s Exhibit Four). That was the first time to Mr. Miller’s knowledge she had alleged she was discriminated against because she was a woman (Employer’s Exhibit Four)). Mr. Miller explained that simply because two employees disagree that does not mean harassment has taken place (Employer’s Exhibit 11). Mr. Miller disagreed with the claimant that he had not taken any action to “resolve any of her earlier disagreements with (Mr. Reighard). (Mr. Miller) reminded her that he has talked with both her and Paul multiple times in private in regards to the two of them being able to get along and respecting each other. (Mr. Miller) reminded (the claimant) of her right to talk with (Mr. Longobardi) in an attempt to resolve the issue. (The claimant) said she didn’t want that (Employer’s Exhibit 11). Mr. Miller stated he was going to talk to Mr. Love and Mr. Reighard to complete his investigation of the October 24, 2014, incident (Employer’s Exhibit 11). Mr. Miller spoke to Mr. Love and he stated he did not like the claimant’s work ethic and he talked to Mr. Reighard who said he was not involved in the incident until it seemed to be getting out of hand at which time he told the claimant she should return to her work area or go to the office (Employer’s Exhibit Four). Mr. Miller then talked to witness/employee Adelina Castro who observed the incident but was not directly involved and corroborated Mr. Love and Mr. Reighard’s description of the events (Employer’s Exhibits Four and 11). The claimant had not reported the existence of any rumors to Mr. Miller prior to verbally attacking Mr. Love and Mr. Reighard October 24, 2014 (Employer’s Exhibit Four). A short time after this incident October 24, 2014, Mr. Reighard told Mr. Miller the claimant was setting the 60 x 60 crate on the scale (Employer’s Exhibit 11). Mr. Reighard went to help her and told her she needed to use 4 x 4s underneath the crate or the fork truck will get hung up and stuck on the scale (Employer’s Exhibit 11). The claimant rejected Mr. Reighard’s advice and “proceeded to get the fork truck hung up on the scale” (Employer’s Exhibit 11). Mr. Reighard offered to help her with the situation but she told him he did not need his help and instead went to get Mr. Wildt to assist her (Employer’s Exhibit 11).

Later on October 24, 2014, the claimant asked the employer why the harassment continued and why Mr. Reighard treated her badly and tried to intimidate her for two years. Mr. Miller stated he would talk to those involved and the claimant stated she needed an answer by Monday, October 27, 2014. Mr. Miller did not approach the claimant October 27, 2014, and she decided she was going to voluntarily leave her employment. Mr. Miller denies that conversation ever took place.

The claimant told some of her co-worker’s, including Mr. Wildt and Mr. Reighard, she had met someone on Match.com who was in construction and she planned to move to Kellogg from Iowa Falls which is approximately 80 miles away from the employer’s facility. She told Mr. Wildt, Mr. Reighard and others she had already moved to Kellogg prior to the October 24, 2014, situation.

The claimant worked October 27, 2014, called in sick October 28, 2014, worked October 29, 2014; and called in sick again October 30, 2014. Mr. Miller received a call about a job reference from BASF regarding the claimant October 30, 2014.

On October 31, 2014, the claimant resigned her position with the employer by calling the employer and stating she could not get along with Mr. Reighard and her other co-workers and she was "moving on."

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

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

Iowa Code § 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 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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). 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.

While the claimant argues she was harassed and discriminated against because she is a woman, the evidence establishes she had personality conflicts with the male dominated work force and participated in the arguing and failure to maintain professional relationships with co-workers as did Mr. Reighard on occasion. The employer's documentation shows that 89 percent of its production staff complained about the claimant at some time during her tenure with the employer and she had conflicts at one time or another with Mr. Reighard, Mr. Wildt, Mr. Love and another employee where she not only participated in the conflict, but in many cases initiated the conflict.

The employer documented its responses to the claimant's formal complaints about co-workers and took immediate steps to address the issues she brought to its attention. In May 2013, the employer launched an immediate investigation into the claimant's statement that Mr. Beltraine was sexually harassing her and took action to prevent it from happening again. When there were issues between Mr. Wildt and the claimant in July 2014 the employer intervened immediately and resolved that situation which resulted in the claimant and Mr. Wildt having a good working relationship following the employer's actions in talking to both employees separately and then together. During the few days the employer was working on the issues between Mr. Wildt and the claimant she alleged he had sent her an inappropriate picture through a text message. The employer acted on her complaint without delay even though it was determined to be without merit. In August 2014, when the employer told the claimant she would be working in packaging and that would be an opportunity for her to show she could manage those responsibilities the claimant asked Mr. Miller not to allow Mr. Reighard into the area because she did not "want or need his help" and did not like it when he came back to help her. Mr. Miller responded by asking Mr. Reighard to work in a different area that day. The last incident in October 2014 involved the claimant instigating unprovoked verbal attacks on

Mr. Love and Mr. Reighard about an alleged rumor started by Mr. Love. The employer investigated and could not establish any such rumor existed and would have taken disciplinary action against the claimant had she not resigned.

The employer rightly argues that it cannot respond to complaints it does not know about and everything that was brought to the employer's attention was dealt with in a fair and timely manner. The employer has an open door policy. The fact that the claimant determined, without any evidence to support her theory, that no action would be taken if she filed a complaint, is belied by the steps the employer did take with regard to each complaint filed.

With regard to the claimant's motivation for filing a claim for unemployment benefits under the theory of harassment and gender discrimination, the claimant denied moving to Kellogg prior to her separation from Metal Tech Industries but she told several employees she had met someone on Match.com and the employer had a reference inquiry from an employer in that area October 30, 2014. The first time the claimant alleged harassment during her employment with this employer was during the investigation of the final incident with Mr. Love and Mr. Reighard October 24, 2014, but she rejected the employer's offer for her to use the employer's open door policy to resolve the issue. The employer's allegation that the claimant voluntarily left her employment to move to Kellogg to be with someone new she had met is possible. However, because there is not enough evidence to establish that, it will not be a consideration in the rendering of this decision.

Lastly, the claimant asserts she was discriminated against because of her gender by the employer because she claimed she heard Mr. Miller, who hired the claimant, state to another employee he would not hire a woman because "they couldn't do the job," right after he hired her. Her accusation does not explain why Mr. Miller would hire the claimant, or any other of the 25 percent of the women who make up the employer's production team, if he thought she could not do the job as the employer wants and needs to maintain a superior work force. That, coupled with the fact that the claimant was nearly always a full participant in the inappropriate and unprofessional, back and forth between her and her co-workers, makes her claim of gender discrimination unpersuasive.

Under these circumstances, the administrative law judge concludes the claimant has not met her burden of proving her leaving was for good cause attributable to the employer as that term is defined by Iowa law. Therefore, benefits are denied.

**DECISION:**

The November 18, 2014, reference 01, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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