

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA M HARRINGTON
Claimant

APPEAL NO. 15A-UI-00643-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

K MART CORP
Employer

OC: 12/21/14
Claimant: Respondent (1)

Section 96.5(1) – Voluntary Quit – Attributable to Employer

STATEMENT OF THE CASE:

K Mart Corporation filed a timely appeal from a representative's decision dated January 8, 2015 (reference 01) which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on March 4, 2015. Claimant participated. Participating on behalf of the claimant was Mr. Stuart Higgins, Attorney at Law. The employer participated by Ms. Peggy Smith, Human Resource Manager; Shawn Hamilton, Assistant Manager; and Terry Dencklau, Assistant Manager.

ISSUE:

At 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: Amanda Harrington returned to employment with K Mart Corporation beginning February 6, 2014. Ms. Harrington left her employment with the company on December 22, 2014 when she left employment due to ongoing harassment by a male worker. Ms. Harrington was employed as a part-time service desk supervisor and was paid by the hour.

Beginning in April 2014 Ms. Harrington began complaints about the conduct of a male employee, Mr. Robinson, to her supervisor. The male employee had made repeated sexual advances towards Ms. Harrington, making sexual innuendos, and following the claimant in the K Mart store.

After the employer had spoken to Mr. Robinson about Ms. Harrington's allegations, the sexual harassment stopped but harassment in a different form started with the male employee's behavior changing to severe treatment of the claimant, refusal to wait on her, and demeaning type behavior towards the claimant in the presence of others.

Ms. Harrington continued to complain to a supervisor and supervisor personnel about Mr. Robinson's ongoing conduct and reasonably believed, based upon statements made by her supervisor, that the company's human resource department was aware of her complaints. The ill treatment by Mr. Robinson of Ms. Harrington nevertheless continued, culminating in a

December 16, 2014 incident where the claimant's husband found it necessary to threaten Mr. Robinson in a parking lot because of the ongoing conduct. The employer at that time promised to resolve the situation and offered the claimant some time away from work. Because the employer's solution were to have the claimant work a different shift or in a different area, Ms. Harrington chose to leave her employment with the company because she didn't believe that the employer's solutions would stop the conduct as it had occurred in numerous areas of the facility, both on and off the clock in the past.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant has sustained her burden of proof in showing that she left employment with good cause attributable to the employer. She has.

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.

Iowa Admin. Code r. 871-24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

An individual who voluntarily leaves their employment must first give notice to the employer of their reasons for quitting in order to give the employer an opportunity to address and resolve the complaints. Kyle v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). An employee who receives a reasonable expectation of assistant from the employer after complaining about working conditions must complain further if the condition persists in order to pursue eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991). 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 Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005).

In the case at hand, Ms. Harrington placed the employer on notice that she was being harassed in the workplace on several occasions by reporting the harassment to supervisory personnel. When the harassment continued in a different form, the claimant again complained putting the employer on notice of the harassing employee's conduct. When the employer took no reasonable action to end the harassment but instead offered suggestions that would not resolve the problem, Ms. Harrington left her employment.

The claimant has sustained her burden of proof in establishing that she left employment with good cause that was attributable to the employer. Unemployment insurance is allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated January 8, 2015 (reference 01) is affirmed. The claimant left employment with good cause attributable to the employer. Unemployment insurance is allowed, providing that she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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