

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LINDA L RUEBER**  
Claimant

**APPEAL NO: 11A-UI-08640-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DIAMOND JO WORTH LLC**  
Employer

**OC: 05/29/11  
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit  
871 IAC 24.26(4) – Intolerable/Detrimental Working Conditions

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated June 27, 2011, reference 01, that held she voluntarily quit without good cause attributable to her employer on May 26, 2011, and benefits are denied. A telephone hearing was held on July 20, 2011. The claimant participated. The employer did not participate.

**ISSUE:**

Whether the claimant voluntarily quit with good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant worked for the employer as a Flex-time maintenance worker from March 25, 2011 to May 16. The employer would call the claimant to come in and perform internal maintenance as needed.

Claimant began to experience sinus infections and lost her voice for one-week due to the smoke environment. She missed work for these reasons. She approached an employer representative about quitting due to health reasons, and asked if she could work as a waitress that would take her away from the smoke. Her request was denied because she had not worked for six months. Since claimant has been away from the smoke environment, she has had no further illness related to smoke. The employer failed to respond to the hearing notice.

**REASONING AND CONCLUSIONS OF LAW:**

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.

871 IAC 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.

The administrative law judge concludes the claimant voluntarily quit with good cause attributable to her employer due to intolerable and detrimental working conditions on May 16, 2011.

Although claimant knew that patron smoking was permitted in her work environment, she did not know that it would cause adverse health conditions to the point of missing work and losing her voice. She sought to be moved to another job away from the smoke, but the employer refused the accommodation based on a six-month employment policy. She had a good cause for quitting employment, as it is reasonable to assume that her health condition and illness would persist the longer she was employed.

**DECISION:**

The department decision dated June 27, 2011, reference 01, is reversed. The claimant voluntarily quit with good cause attributable to her employer on May 16, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs