

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY M MCLAIN
Claimant

APPEAL NO. 08A-UI-07849-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 08-03-08 R: 02
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Leaving
871 IAC 24.26(4) – Intolerable Working Conditions

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 25, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 16, 2008. The claimant did participate and was represented by Ethan Kaplan, Attorney at Law. The employer did participate through Tim Elliott, Group Manager and Travis Smith, Production Supervisor and was represented by Karen Brewin of TALX UC eXpress. Employer's Exhibit One was received.

ISSUE:

Did the claimant voluntarily quit her employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a production worker full time beginning May 28, 2007 through July 28, 2008 when she voluntarily quit.

The claimant sustained work-related carpal tunnel syndrome for which she was treated by the company physician and was paid workers compensation benefits. After suffering her injury, some of her coworkers, Josh, Rich and Grant repeatedly referred to and called the claimant "hand joby" and told her that she suffered from carpal tunnel because she was "giving hand jobs in the parking lot." Rich admitted that he had called the claimant "carpet tunnel" intimating that she suffered from carpal tunnel syndrome because she was on her "hands and knees.

The claimant complained to her immediate supervisor Tim Elliott about the comments she was being subjected to by her coworkers. Mr. Elliott did not investigate after the claimant made her complaints nor did he stop the coworkers from making their comments.

On April 23 the claimant complained to Travis Smith, Mr. Elliott's supervisor, about the comments she was being subjected to. Mr. Elliott did not take any action to investigate or to stop the comments.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment with 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.

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.

Claimant was not required to give notice of her intention to quit due to an intolerable, detrimental or unsafe working environment. Hy-Vee, Inc. v. Employment Appeal Bd., No. 86/04-0762 (Iowa, Nov. 18, 2005).

The U.S. Supreme Court has held that a cause of action for sexual harassment may be predicated on two types of harassment: (1) Harassment that involves the conditioning of concrete employment benefits on sexual favors, and (2) harassment that, while not affecting economic benefits, creates a hostile or offensive working environment. *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 62 (1986).

The claimant was subjected to comments that are on their face harassing and did create a hostile and offensive work environment. She complained repeatedly to her supervisor Tim Elliott and to Travis Smith. The comments did not cease and in fact grew more frequent after she complained. Neither Mr. Elliott nor Mr. Smith stopped the coworkers from making the harassing comments nor did they even investigate the comments. Until the claimant quit, the employer conducted no investigation. The administrative law judge is persuaded that the claimant did complain about the comments her coworkers were making to her and about her. The coworkers admitted making some of the comments to the claimant and were disciplined. The fact that the claimant's coworkers admitted making the comments persuade the administrative law judge that the claimant was undergoing repeated harassment, not an isolated incident. The employer knew because the claimant complained. The claimant's leaving was with good cause attributable to the employer because the employer did nothing to stop the comments. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The August 25, 2008, reference 01, decision is affirmed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css