

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH A MAST
Claimant

APPEAL NO. 09A-UI-11640-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTHWEST DIRECT OF IOWA INC
Employer

**Original Claim: 06/28/09
Claimant: Respondent (2/R)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Northwest Direct of Iowa, Inc. (employer) appealed a representative's August 10, 2009 decision (reference 01) that concluded Sarah A. Mast (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 September 14, 2009. The claimant participated in the hearing with her attorney, Alice Wilske. Tim Rote 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 on May 9, 2007. She worked as a full-time telemarketer. S. supervised the claimant. L.R. is a co-worker who had been recently promoted to a supervisory position. L.R. did not supervise the claimant.

On June 23, the claimant came back from her break around 2:46 p.m. She was on a phone call at 2:30 p.m. and was not done with the call until six minutes later. When the claimant returned from her break, she reported that L.R. told her she could not again be late from a break. After the claimant explained she was not late because she had been on a phone call at 2:30 p.m., the claimant reported that L.R. told that if she were late again, he would snap her neck. He then made a snapping motion and returned to working at his computer. L.R. was about six feet away from the claimant during this exchange. The claimant asked a co-worker, D., if she had heard what L.R. said to the claimant. D. indicated she had not heard anything, because she had been on the phone.

The claimant also reported that about five minutes later she asked L.R. if she could talk to S. or C., the assistant manager or manager of the facility. L.R. indicated they were both busy and

asked if the claimant wanted to talk to him about any concerns. The claimant did not say anything to L.R. A short time later, T., the assistant floor person, walked by and the claimant reported the incident she had with L.R. to her. Later that day, the claimant talked to S. and reported the "break comment" and that L.R. glared at her later that day. L.R. made the claimant very uncomfortable. S. told the claimant that C., the manager, was on vacation until Thursday and when C. came back the employer would look into her complaint. The claimant did not object, because L.R. did not work the next day.

On Thursday, the claimant felt L.R. glared at her in such a way that she knew the employer talked to him about her complaint and he knew she was the person who had filed the report. When the claimant asked management on Thursday what was happening with her complaint, S. indicated the employer was taking care of it. S. also indicated that when the employer talked to L.R. her name was not mentioned. The claimant still believed L.R. knew she was the person who made the complaint. The claimant did not ask the employer what they were doing to take care of or address her complaint.

S. and C. made independent investigations of the claimant's complaint. The employer had not completed the investigation by Monday, June 29. When the claimant reported to work on June 29, she quit effective immediately. The claimant quit because she did not feel safe working around L.R. The employer indicated the claimant should not quit.

The employer's investigation, which involved talking to L.R. and the claimant's co-workers, indicated that no one heard or observed L.R. make the comment or act the way the claimant described. L.R. denied he said or acted disrespectful to the claimant. The employer's investigation concluded the claimant had a problem working with African Americans.

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 voluntarily quits employment with good cause when she leaves because of unsafe working conditions or intolerable or detrimental working conditions. 871 IAC 24.26 (2), (4). The claimant admits she had no problems at work before June 23. The claimant took the appropriate step by informing management L.R. made the comment he would snap her neck if she were late again. Management then took appropriate steps by investigating the claimant's complaint. Since the claimant indicated L.R. was six feet from her when she heard the comment about snapping her neck, it is difficult to understand why no other co-worker heard the comment. The claimant's complaint that L.R. glared at her on June 23 and 25 because he knew she had complained is an assumption. Again, if this were true, it is difficult to understand why no co-worker made the same observation. Since L.R. was not the claimant's supervisor, he had no interest as to when she went on break or returned from a break.

The evidence indicates the claimant's imagination took over her common sense. The alleged isolated comment does not establish any unsafe or intolerable working conditions. The employer took appropriate steps by investigating the incident. The claimant quit before the employer finished the investigation, so the claimant had no idea what, if anything, the employer would do in this situation.

The claimant quit her employment for compelling personal reasons. She did not establish that she quit for reasons that qualify her to receive benefits. Therefore, as of June 28, 2009, the claimant is not qualified to receive benefits. Since the claimant has received benefits since June 28, the issue of overpayment will be remanded to the Claims Section.

DECISION:

The representative's August 10, 2009 decision (reference 01) is reversed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of June 28, 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