

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDY JENNINGS
Claimant

APPEAL NO: 06A-UI-09465-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

VON MAUR INC
Employer

OC: 08-27-06 R: 04
Claimant: Appellant (4)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 19, 2006, reference 01, decision that denied benefits except for the five day period ending September 2, 2006. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 9, 2006. The claimant participated in the hearing. Rebecca Pettifer, Payroll Supervisor; Heather Purlee, Human Resources Manager; and Jim Carter, Credit Manager, participated in the hearing on behalf of the employer.

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 new accounts associate for Von Maur from March 17, 2003 to August 29, 2006. In August 2003 Carrie Mach became the claimant's supervisor. In September 2004 the claimant was eating a sandwich from Wal-Mart in the employer's cafeteria area and Ms. Mach said, "I see you are eating gas station food again." The claimant was upset and offended by the comment and in May 2005, after Ms. Mach had made the same statement several times, she went to her office in tears and asked her to "please stop saying that." Ms. Mach indicated she thought it was funny and continued to make the comment to the claimant. In August 2005 the claimant asked Ms. Mach if she had done something wrong because of the treatment she received from her and Ms. Mach replied, "No, I just don't like you." Ms. Mach called the claimant into her office sometimes three or four times a day and told her she was incompetent. In September 2005 Ms. Mach told the claimant she was too social and needed to stay at her desk and not talk to anyone if she liked her job. One week later Ms. Mach called the claimant into her office and told her she was being rude to her co-workers and would lose her job if it continued. In October 2005, a new employee, Cindy Colter, was hired. The claimant believed Ms. Mach disliked Ms. Colter and consequently left her alone until Ms. Colter left. In January 2006 Ms. Mach told another employee to "stay away from" the claimant. Also in January 2006 the claimant was talking to a co-worker when Supervisor Lisa Herman called the

co-worker and asked if there was a meeting going on. She then called Ms. Mach and informed her of the situation and told her to keep the claimant "in her chair." When the claimant would get out of her chair she would be told to go back to her desk while other employees were allowed to get up and speak to each other. In early spring 2006 the claimant was reprimanded because the employer said her skirt was too short. The employer's policy stated skirts could not be more than two inches above the knee. The claimant had another associate measure her skirt and discovered it was one and one-half inches above her knee. She returned to Human Resources and asked them to measure it but they refused. The next day Ms. Mach called the claimant into her office and told her not to discuss any of her disciplinary actions with anyone else. The claimant felt she was "picked on" and that Ms. Mach's "favorites" were treated differently than she and other employees Ms. Mach did not like. On August 1, 2006, the claimant went to Human Resources about her situation and was told the employer would follow up and investigate the claimant's allegations. After discussing the claimant's concerns with her it spoke with Ms. Mach August 9, 2006, and Jim Carter, Credit Manager, August 10, 2006. Both denied the claimant's allegations and the employer did not speak to any of her co-workers. Human Resources told the claimant August 11, 2006, that it had investigated her complaints but it would be "hard to know what happened" with co-workers, the skirt situation, and the treatment of the claimant compared to her co-workers. It also told her it would not remove a written warning about credit card activity on a customer's card that had been stolen but offered her additional retraining. Additionally, the employer asked the claimant to establish open communication and maintain a positive manner toward the employer and co-workers. The claimant was visibly upset and submitted her resignation notice August 11, 2006, with an effective date of September 1, 2006. On August 27, 2006, Ms. Herman asked the claimant when her last day was and when the claimant stated September 1, 2006, Ms. Herman said, "Oh, you want them to pay an additional month of benefits." On August 29, 2006, the employer talked to the claimant about increasing her credit limit on her personal Von Maur credit card account. The claimant denied submitting the application for the card or increasing her credit limit and believes someone took her application off her desk and submitted it. The employer then terminated her employment for violating company rules by raising her own credit limit.

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.

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 dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). 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. The claimant submitted her resignation notice August 11, 2006, which was before the employer terminated her employment August 29, 2006, three days before the effective date of her resignation. The claimant credibly testified about her treatment at the hands of Ms. Mach and that treatment was unconscionable. Ms. Mach showed favoritism to

certain employees while harassing the claimant on an almost daily basis except when Ms. Colter worked there. When the claimant asked Ms. Mach if she had done something wrong Ms. Mach simply said, "No, I just don't like you," and those words were reflected in her behavior and attitude toward the claimant. When the claimant complained of her treatment by Ms. Mach the employer conducted what appears to be a perfunctory investigation and then effectively reprimanded the claimant. Whether intentional or not the employer created a hostile work environment for the claimant and did not take any steps to stop the harassment. Under the circumstances it was not unreasonable for the claimant and other employees to fear retaliation if they expressed their concerns and it seems that the claimant's termination was related to her complaints and resignation. Consequently, the administrative law judge concludes the working conditions were intolerable and detrimental to the claimant and she has demonstrated that her leaving was for good cause attributable to the employer. Benefits are allowed.

DECISION:

The September 19, 2006, reference 01, decision is modified in favor of the claimant. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs