

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUTH A LETRICH
Claimant

APPEAL NO. 11A-UI-08816-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMBASSY REHAB & CARE CENTER INC
Employer

OC: 05-29-11
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 1, 2011, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on July 27, 2011. The claimant did participate. The employer did participate through Leslie Hugen, administrator.

ISSUE:

Did the claimant voluntarily quit her employment without 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 certified nurse's aide, part-time, beginning July 30, 2010, through October 2, 2010, when she voluntarily quit. On August 31, the new director of nursing held a meeting for all of the certified nurse's aides. He told them that when the shift changed over from night to morning, the morning aid would be required to make rounds with the night aids and check every resident to see if their bedding or adult diaper needed to be changed. The claimant worked with Jessica on September 2 and 3. On both days, Jessica refused to help the claimant change the resident's sheets or their adult diapers. The claimant went to the supervisor, the director of nursing, and made a written complaint. The director of nursing told the claimant that his hands were tied as to what action he could take against Jessica. Jessica yelled and screamed at the claimant and used profanity when speaking to her. The claimant overheard the director of nursing call Jessica into his office to discuss with her why she was refusing to help the claimant and other aids help change the residents. Jessica told the director of nursing "f**k you" and refused to perform the job duties that the other aids were required to perform. The current administrator was hired after the claimant's employment ended. Since she was hired, Jessica's employment was ended with her being discharged for poor job performance issues.

When the claimant was hired, it was with the understanding that she would work only limited hours due to her receipt of social security benefits. The employer agreed to limit her hours so she could continue to receive benefits. As time passed, the employer continued to expand the claimant's hours, requiring that she stay late and that she cover for absent employees. The

claimant finally quit on October 2 because she could no longer endure Jessica's refusal to help her in the mornings and because the employer's increase in her hours was jeopardizing her receipt of social security.

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 § 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 use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. EAB*, 462 N.W.2d 734 (Iowa App. 1990).

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). Claimant was not required to give notice of his intention to quit due to an intolerable, detrimental, or unsafe working environment if employer had or should have had reasonable knowledge of the condition. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Just as an employer is entitled to expect the use of civil language from employees, an employee may expect civil treatment from their employer and their coworkers. The director of nursing knew of Jessica's intolerable language when speaking to the claimant, as it was easily overheard in the facility. Additionally, Jessica used profanity when speaking to the director of nursing himself, including saying to him, "F**k you." Jessica's conduct and the director of nursing's refusal to discipline her or to stop her from treating the claimant so rudely rise to the level of creation of an intolerable work environment and are sufficient to grant claimant a good-cause reason attributable to the employer for leaving her employment. No employee should have to endure intimidation, physical and emotional tantrums, name-calling, and bullying behavior in order to retain employment or avoid disqualification from unemployment insurance benefits. Benefits are allowed.

DECISION:

The July 1, 2011 (reference 02) 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/kjw