

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**REBECCA C DARRAGH**  
Claimant

**APPEAL NO. 09A-UI-06067-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KWIK TRIP INC**  
Employer

**Original Claim: 03/22/09  
Claimant: Respondent (2-R)**

Iowa Code section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 13, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 14, 2009. Claimant Rebecca Darragh participated. Lynn Nieman, Store Leader, represented the employer.

**ISSUE:**

Whether the claimant's voluntary quit was for good caused attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Rebecca Darragh was employed by Kwik Trip/Kwik Star as a full-time cashier/clerk from April 2008 until March 20, 2009. Ms. Darragh was assigned to the evening shift, 3:00 to 11:00 p.m. Ms. Darragh last performed work for the employer on March 13, 2009, but walked out before the end of her shift. Lynn Nieman, Store Leader, was Ms. Darragh's immediate supervisor. Kim Keil, District Leader (district manager), was the supervisor above Ms. Nieman.

Ms. Darragh left the employment due to comments made by a coworker and one or more customers. One day at work, Ms. Darragh announced that she was pregnant. Ms. Darragh made this announcement to Ms. Nieman and within earshot of two coworkers. At the same time Ms. Darragh announced her pregnancy, she told those present that her boyfriend did not want additional children. Ms. Darragh also told those present that she did not want others to know that she was pregnant. In the week before March 13, Ms. Darragh learned that a coworker, Layla, had told coworkers that Ms. Darragh was pregnant, that her boyfriend did not want more children, and that Ms. Darragh had been aware of this before she became pregnant. Layla also sent one or more text messages to Ms. Darragh on the same topic. Ms. Nieman initially issued a written reprimand to Layla, but subsequently discharged Layla from the employment.

During Ms. Darragh's last shift on March 13, an unidentified patron stopped into the convenience store and told Ms. Darragh that Layla was at the bar down the street telling people that Ms. Darragh got her fired despite Layla doing no wrong. The evening before, an unidentified patron had commented to Ms. Darragh that she was getting chubby and asked if

she was pregnant. These two comments within a day of each other, and Layla's prior sharing of Ms. Darragh's pregnancy announcement, are what prompted Ms. Darragh to leave her shift early on March 13. Ms. Darragh believed she was being harassed by Layla and the patrons. On March 13, Ms. Darragh telephoned Ms. Nieman from the store and told her she was not going to put up with the "harassment" and was going to leave before the scheduled end of her shift. Ms. Nieman directed Ms. Darragh to contact the overnight cashier/clerk to come in early and told Ms. Darragh she could leave.

After Ms. Darragh left her shift early on March 13, Ms. Nieman contacted Ms. Keil to apprise her of the situation.

On March 14, Ms. Nieman met with Ms. Darragh at the convenience store before the scheduled start of Ms. Darragh's shift. Ms. Darragh told Ms. Nieman she was not going to put up with harassment at work. The employer had already barred Layla from the store and Layla had not been in the store for a week. Ms. Nieman asked Ms. Darragh what else she wanted the employer to do. Ms. Nieman asked Ms. Darragh for the identity of the patrons who had made remarks and Ms. Darragh was either unwilling or unable to provide names. Ms. Darragh yelled at Ms. Nieman when Ms. Nieman indicated there was nothing else she could do to address the matter before the start of Ms. Darragh's shift.

On March 14, District Leader Kim Keil spoke with Ms. Darragh and scheduled a meeting between the two to occur on Tuesday, March 17, at 1:00 p.m.

On the evening of March 15, Ms. Darragh telephoned Ms. Keil. Ms. Darragh yelled at Ms. Keil that Layla was in the parking lot of the convenience store. Ms. Keil told Ms. Darragh that she could not understand Ms. Darragh through the yelling, that it was inappropriate for Ms. Darragh to yell, and that they would meet as scheduled on the following Tuesday, March 17, to discuss Ms. Darragh's concerns. Ms. Keil told Ms. Darragh that absent a restraining order, there was not much more the employer could do. Ms. Darragh asserted that she was working with an officer at the Waterloo Police Department.

On Tuesday, March 17, Ms. Darragh notified Ms. Keil that her vehicle's brakes were not working and she could not make the scheduled meeting. During the conversation on March 17, Ms. Darragh refused to return to the second shift at her assigned store. Ms. Keil offered to have Ms. Darragh switch evening shifts with an employee at one of the employer's two additional local stores, but Ms. Darragh refused this proposed accommodation. Because Ms. Darragh had refused to continue in her evening shift hours, the employer had covered Ms. Darragh's shifts on March 14, 15, 16, leading up to the scheduled meeting set for March 17. Ms. Darragh insisted that the employer provide her with first-shift hours. At about the same time Ms. Darragh had announced her pregnancy, she had requested first-shift hours. The employer did not have first-shift hours available. The employer did not think first-shift hours would resolve Ms. Darragh's concerns, because the same regular customers who frequented the store in the evening also frequented the store earlier in the day. During the March 17 conversation, Ms. Keil directed Ms. Darragh to let her know her intentions, either to return to work or not, by calling Ms. Keil on the following Friday at 9:00 a.m.

On that following Friday, March 20, Ms. Darragh stopped into her assigned store at 9:00 a.m. to make a purchase, but did not telephone Ms. Keil. Ms. Keil was at another location. Ms. Nieman notified Ms. Keil that Ms. Darragh was in the store at 9:00 a.m. Ms. Darragh had contacted the employer's legal assistance help line, but had been advised they could not advise her due to a conflict of interest. Ms. Darragh attempted to contact someone at Iowa Legal Aid, but did not speak to anyone. At 11:24 a.m., when Ms. Darragh had still not contacted Ms. Keil, Ms. Keil

contacted Ms. Darragh. Ms. Keil asked Ms. Darragh whether her failure to contact the employer at the appointed time was an indication that she had decided to leave the employment. Ms. Darragh confirmed it was.

### **REASONING AND CONCLUSIONS OF LAW:**

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 requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

Quits due to dissatisfaction with the work environment are presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21). Quits due to dislike of the assigned shift are presumed to be without good cause attributable to the employer. See 871 IAC 24.25(18). In addition, quits due to inability to get along with coworkers are also presumed to be without good cause attributable to the employer. See 871 IAC 24.25(6).

The weight of the evidence in the record fails to establish intolerable or detrimental working conditions that would have prompted a reasonable person to leave the employment. The situation that Ms. Darragh describes as harassment was mild, if it was harassment at all. The evidence indicates that Ms. Darragh created her own problems. Ms. Darragh announced her unplanned pregnancy. Ms. Darragh announced that her boyfriend would not be happy. Ms. Darragh broadcasted the sort of news that others would be inclined to pass on and then had the unreasonable expectation all conversation on the topic not authorized by her would cease. Ms. Darragh is strong on allegations and weak on details with regard to the alleged text message harassment. In addition, a regular customer asking if Ms. Darragh was pregnant because she appeared to be gaining weight might be rude, but was not harassment under the circumstances. Likewise, a regular customer's sharing with Ms. Darragh that Layla was at the local bar badmouthing Ms. Darragh after Ms. Darragh's complaint resulted in the Layla's discharge from the employment also was not harassment. The weight of the evidence indicates that the employer took reasonable and appropriate steps to resolve the concerns that Ms. Darragh brought to the employer's attention. Ms. Darragh had unreasonable expectations and left the employment because the employer would not change her shift.

Ms. Darragh voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Darragh is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Darragh.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The Agency representative's April 13, 2009, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw