

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENISE J SOMMERFELT**  
Claimant

**APPEAL NO. 09A-UI-08611-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAVERLY HEALTH CENTER**  
Employer

**OC: 04/19/09**  
**Claimant: Respondent (2-R)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 9, 2009, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on July 1, 2009. Claimant Denise Sommerfelt participated. Karen Buls, Director of Human Resources, represented the employer and presented additional testimony through Jim Schutte, Ambulance Manager. Exhibit A was received into evidence.

**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: Denise Sommerfelt was employed by Waverly Health Center as a full-time emergency medical technician (E.M.T.) from August 2006 until April 15, 2009, when she voluntarily quit the employment. On April 15, Ms. Sommerfelt telephoned her immediate supervisor, Jim Schutte, Ambulance Manager, and told him she would not be returning to the employment. On April 13, Ms. Sommerfelt provided the employer with a written complaint concerning a coworker, Joe Cellucci, a paramedic. Ms. Sommerfelt alleged in her complaint that Mr. Cellucci twice had been texting on his cell phone while operating the employer's ambulance unit in February 2009 and had most recently sent a text message on his cell phone while on a call for service on April 13. Ms. Sommerfelt also asserted that Mr. Cellucci's son and fiancé had interfered with the work routine in February 2009. Ms. Sommerfelt's written complaint also cited sexually harassing comments she asserted Mr. Sommerfelt had made to and about her and other female employees in the past. At the hearing, Ms. Sommerfelt was unable to provide a date, or approximate date, of the last such incident. But in a civil rights complaint Ms. Sommerfelt filed after the separation, she indicated the last such incident had occurred on February 23, 2009. Ms. Sommerfelt submitted her unsolicited written statement after a female coworker complained to Mr. Schutte about Mr. Cellucci. Ms. Sommerfelt listed additional complaints about working with Mr. Cellucci.

The employer has a policy against sexual harassment contained in an employee handbook. After the employer received Ms. Sommerfelt's complaint and the complaint from the other female employee, the employer interviewed all of the affected parties. The employer concluded that Ms. Sommerfelt's delay in bringing the matters to the employer's attention were a fact to be considered in deciding what action to take against Mr. Cellucci. The employer reprimanded Mr. Cellucci, but allowed him to continue in the employment. This was not acceptable to Ms. Sommerfelt, who decided to quit the employment.

## **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).

While the administrative law judge appreciates and does not minimize the effects sexual harassment can have in the workplace and other contexts, the weight of the evidence does not support Ms. Sommerfelt's assertion that she quit the employment in response to sexually harassing conduct on the part of Mr. Cellucci. The weight of the evidence indicates that the most recent date on which Ms. Sommerfelt alleges sexually harassing conduct occurred was February 23, 2009. More than a month and a half prior to Ms. Sommerfelt's complaint to the employer. The weight of the evidence indicates that the remarks that most offended Ms. Sommerfelt occurred well before the February date. Ms. Sommerfelt cannot cite any more recent specific incident of alleged sexual harassment. The weight of the evidence indicates that Ms. Sommerfelt voluntarily quit in response to a personality conflict with Mr. Cellucci. Mr. Cellucci's texting behavior and generally disagreeable demeanor did not create intolerable or detrimental working conditions that would have prompted a reasonable person to leave the employment. Where a person voluntarily quits due to an inability to work with a coworker, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(6).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Sommerfelt voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Sommerfelt 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. Sommerfelt.

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 June 9, 2009, reference 03, 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/pjs