

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICE, LISA, M
Claimant

APPEAL NO. 10A-UI-16317-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GIT-N GO CONVENIENCE STORES INC
GIT-N GO
Employer

OC: 10/31/10
Claimant: Respondent (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 23, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 12, 2011. Claimant participated. Lynette Butt represented the employer. Exhibits One and Two were 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: Lisa Rice was employed by Git-n-Go Convenience Stores as a full-time cashier from April 16, 2010 until October 16, 2010 when she voluntarily quit in response to verbal abuse perpetrated by Assistant Manager London Oliver. Store Manager Cindy Richardson was Ms. Rice's immediate supervisor. Ms. London also had supervisory authority over Ms. Rice. The problems started in September 2010, after a customer reported to the store manager that Ms. Oliver had been smoking marijuana in her car just outside the workplace. Ms. Oliver believed Ms. Rice had some role in reporting the matter to the employer. Thereafter, Ms. Oliver engaged in a regular profanity-laced tirade directed at Ms. Rice. The tirades took place with customers present. Ms. Rice went to Ms. Richardson to complain about the treatment. Ms. Richardson told Ms. Rice just to let it go. But Ms. Oliver's conduct continued until October 16, 2010, when Ms. Rice decided she could not bear it anymore and walked out during her shift. During the last shift, Ms. Oliver asked Ms. Rice, "What the fuck's your problem? Why the fuck are you saying shift like that? It's all your fucking fault. You know Julie [a coworker] wants to quit because of you. I'm tired of the high school drama." This followed a similar tirade a few days earlier, during which Ms. Oliver accused Ms. Rice of talking to customers about her. Included in Ms. Oliver's comments were, "This is fucking retarded. I'm tired of the fucking drama, Lisa."

The employer operates a couple dozen stores the Des Moines metropolitan area. Ms. Rice did not think to ask for a transfer to one of those stores before she quit. Employer attempted to

contact Ms. Rice after she abruptly ended her employment, but did not hear back from Ms. Rice. Ms. Rice appeared on October 22 and completed a separation form. At that time, Ms. Rice cited verbal abuse as the basis for her decision 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).

The weight of the evidence in the record establishes intolerable and detrimental working conditions that would have prompted a reasonable person to leave the employment. An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. Warrell v. Iowa Dept. of Job Service, 356 N.W.2d 587 (Iowa Ct. App. 1984). Just as the employer has the right to expect decency and civility, employees have the right to expect the same. In this case, the assistant manager's conduct was anything but decent and civil. The claimant took reasonable and appropriate steps to bring the conduct to the employer's attention by complaining to her immediate supervisor. The supervisor provided an unsatisfactory and nonresponsive response. The claimant reasonably concluded her choice was to endure the verbal abuse or separate from employment.

The claimant's quit the employment for good cause attributable to the employer. Accordingly, the claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

DECISION:

The Agency representative's November 23, 2010, reference 01, decision is affirmed. The claimant voluntarily quit the employment for good cause attributable to the employer. The

claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css