

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER MANNING

Claimant

APPEAL NO: 09A-UI-15343-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

PARK PROFESSIONAL SERVICES INC

Employer

OC: 09-13-09

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 6, 2009, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on November 13, 2009. The claimant participated in the hearing. The employer provided a phone number prior to the hearing but was not available at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice 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 bartender/server for Park Professional Services from June 3, 2008 to September 16, 2009. On September 14, 2009, the claimant was working during Monday Night Football. She had her cell phone in her apron pocket and when she was changing kegs she got some beer on her cell phone and it stopped working. On September 15, 2009, she went to a Sprint store and was told it should dry out. The claimant purchased a new phone and left to go to work. A manager told her to put her phone in a bag of rice and it would draw any moisture out of the phone. General Manager Ken Haugen was going to use duster spray on her phone but it did not work so they placed the phone in a bag of rice. The claimant noticed she had three missed calls at the time she put the phone in the rice. Mr. Haugen put the phone under his desk. At 7:46 p.m. the claimant received a text message on her new phone from Mr. Haugen asking, "Who is Chris?" The claimant was convinced Mr. Haugen went through the messages on her old phone. She asked Mr. Haugen how he knew about Chris and Mr. Haugen said he had heard his name at the bar and the claimant denied that possibility, stating no one there knew about Chris. On September 16, 2009, the claimant texted Mr. Haugen at 8:30 a.m. and said she was coming to get her cell phone. When she arrived Mr. Haugen retrieved the cell phone and it was "full of moisture" that was not there before and there were only two messages. The claimant told Mr. Haugen someone did something to her

phone and she was quitting until she “got the cell thing taken care of.” Mr. Haugen said the claimant was “crazy.” She went back to the Sprint store and handed the Sprint employee her phone and asked what happened to it. He told her the phone got water on it. He made that determination because he said beer would not have done that, especially two days later. There was a water indicator on the back of the phone. Apparently it was white September 15, 2009, indicating there was no damage and on September 16, 2009, it was red meaning there was damage done. After speaking to the Sprint employee the claimant called the other general manager and said she quit because something had been done to her phone. The Sprint employee told her to simply leave the phone in the sun and it would be fine. The claimant turned her old cell phone on at 6:30 p.m. September 16, 2009, and one message was from Chris, stating, “I miss you.” Later that evening the general manager of the restaurant called to confirm she quit and the claimant said she did so because someone went through her personal cell phone and it was damaged. The claimant maintains Mr. Haugen damaged her \$450.00 cell phone when he took it out of the rice and used it. She also claims he violated her privacy and called her crazy in citing reasons she quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without 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 unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). 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. “Good cause” for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (Florida App. 1973). The claimant chose to keep her personal cell phone in her apron when working and spilled beer on it while changing kegs. The Sprint employee told her it would dry out but instead of taking his professional advice she listened to a bar or restaurant manager and put it in a bag of rice and then chose to leave her phone in the bag of rice on the employer's premises overnight. Mr. Haugen called her that evening and asked who Chris was so the claimant assumed he must have listened to her messages rather than accepting his explanation that he heard Chris' name at the bar. She picked up the cell phone the next day and it was “full of moisture” and there were two messages on her phone rather than three. There is no explanation as to why Mr. Haugen would listen to the claimant's messages but only erase one. The claimant chose to quit after picking up her phone because Mr. Haugen called and asked her about Chris and because there was more moisture on her phone. Mr. Haugen said she was “crazy” for thinking he listened to her messages and that he had anything to do with the moisture on her phone. The Sprint employee confirmed there was more moisture in the phone but could not say how it happened and it is not clear if the claimant told him she left it in a bag of rice. He told her to leave it in the sun and it would dry. The claimant called the general

manager of the restaurant and said she was quitting because something had been done to her private phone. While it is possible that Mr. Haugen took her phone out of the rice and listened to her messages, there is not enough evidence to prove that is what happened. Additionally, she failed to follow the Sprint employee's advice of leaving it alone and letting it dry out but instead decided to follow the advice of a restaurant or bar general manager who told her to put it in a bag of rice. There is no evidence indicating whether that could be harmful to the phone. Under these circumstances the administrative law judge must conclude the claimant has not met her burden of proving that her leaving was due to unlawful, intolerable or detrimental working conditions as defined by Iowa law. Therefore, benefits are denied.

DECISION:

The October 6, 2009, reference 01, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs