

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

KAREN M OHNESORGE
Claimant

APPEAL NO: 18A-UI-10662-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TSCHIGGFRIE EXCAVATING
Employer

OC: 01/21/18
Claimant: Respondent (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 18, 2018, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on November 26, 2018. The claimant participated in the hearing with Attorney Devin Kelly. Ty Malcom, Office Manager, participated in the hearing on behalf of the employer and was represented by Attorney Davin Curtiss.

ISSUE:

The issue is whether the claimant voluntarily left her employment for 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 truck foreman/dispatcher/driver for Tschiggfrie Excavating Co. from May 19, 2007 to September 28, 2018. She voluntarily left her employment due to harassment from another employee.

The claimant had a contentious working relationship with Welder Sam Becker. On July 12, 2018, the claimant directed Mr. Becker to get a trailer ready to go out on a job that night. Mr. Becker was angry and upset about the deadline to get the trailer done and called the claimant a "fucking bitch" and a "fucking stupid bitch." He then told her he could shoot her from half a mile away and told the claimant she had better watch herself. He had made similar threats in the past but she felt he was unstable and was very concerned about his latest threat. Both the claimant and Mr. Becker were military veterans and the claimant believed Mr. Becker could shoot her from half a mile away. In response to his threat, the claimant started carrying her handgun to work. The claimant had reported her concerns about Mr. Becker to Owner Rodney Tschiggfrie in June 2018, but he responded that Mr. Becker was harmless so the claimant did not feel she would get any relief by going back to Mr. Tschiggfrie. She told Office Manager Ty Malcolm about Mr. Becker's harassment several times but he did not take any action either. She also wore her gun in front of Mr. Malcolm but he did not respond to her actions.

The employees in the shop had calendars with pictures of naked women all over the shop. Mr. Tschiggfrie had conversations with the claimant from the men's restroom which did not have a door and the wall did not go up to the top of the ceiling. Employee Doug Blake repeatedly smacked the claimant on the butt and told her complaining to Mr. Tschiggfrie would not do any good because he was performing oral sex on Mr. Tschiggfrie. During a hazardous materials class, the men were watching pornography on their phones with talking female genitalia and asked the claimant if that was how her genitalia sounded.

One to two weeks after Mr. Becker threatened the claimant she was sent on a job out of town and was only in the office on weekends. Mr. Becker was not working the out of town job so the claimant did not have to see him but brought her gun to work on weekends because she feared he would show up when she was there alone. When the out of town job ended in late September 2018, the claimant submitted her resignation notice effective September 28, 2018, because she did not feel safe at work.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons, 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, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.26(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.

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 claimant was repeatedly harassed by Mr. Becker and sexually harassed by other men at the company. The harassment ranged from Mr. Becker directing profanity toward her to threatening to shoot her and the sexual harassment included calendars of naked women all over the shop, Mr. Tschiggfrie using the restroom when speaking to the claimant, Mr. Blake patting her on the butt, and employees watching pornography and making comments to the claimant about her genitalia. No employee should be subject to such blatant harassment and sexual harassment. Additionally, the claimant was made to feel unsafe in her workplace. Any reasonable person would have voluntarily left this employment. Therefore, benefits are allowed.

DECISION:

The representative's decision dated October 18, 2018, reference 01, is affirmed. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn