

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHANTEL M OPAL
Claimant

APPEAL NO. 11A-UI-06675-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**WINGS USA INC
QUAKER STEAK & LUBE**
Employer

**OC: 04/17/11
Claimant: Respondent (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 16, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 20, 2011. Claimant participated. Zachary Buck, General Manager, 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: Chantel Opal was employed by Wings U.S.A., Inc., doing business as Quaker Steak & Lube restaurant as a part-time server from 2007 until January 1, 2011, when she voluntarily quit the employment. Ms. Opal's decision to leave the employment was prompted by multiple factors. Ms. Opal wanted to work as a bartender and the employer put off addressing her request to end bar. General Manager Zachary Buck had a habit of making inappropriate, demeaning remarks to Ms. Opal. These included that she was the whitest white girl he had ever seen, that her legs were so white that they blinded him, and that she should go on the Maury Povich show because she needed to change her looks. Ms. Opal endured such comments for much of the employment.

Ms. Opal worked as a tax preparer during tax season. Ms. Opal would ordinarily continue to work for Quaker Steak & Lube during tax season. Toward the end of the employment, Ms. Opal had the opportunity to work full time during tax season. Ms. Opal opted to leave the employment with Quaker Steak & Lube and provided her notice to the employer.

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).

Several factors are at work in this case. To the extent that Ms. Opal quit because the employer would not train her to bartend, the quit would be without good cause attributable to the employer. To the extent that Ms. Opal quit to accept new employment, the quit would be without good cause attributable to the employer. But these were not the sole bases for the quit. The weight of the evidence does establish that the employer made inappropriate, demeaning comments to Ms. Opal about her skin color and her appearance. Mr. Buck concedes he told Ms. Opal that her legs were so white that they blinded him. The weight of the evidence suggests there was more to the comments than that and that the comments in question did not relate to wrinkles or dirt on the claimant's uniform. These comments created intolerable and detrimental working conditions that made the quit for good cause attributable to the employer.

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

DECISION:

The Agency representative's May 16, 2011, 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