

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY J MOORMAN
Claimant

APPEAL NO. 08A-UI-05668-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALL IOWA CONTRACTING COMPANY
Employer

OC: 05/11/08 R: 03
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Ashley Moorman filed a timely appeal from the June 9, 2008, reference 02, decision that denied benefits. After due notice was issued, a hearing was commenced on July 7, 2008 and concluded on July 11, 2008. Ms. Moorman participated and presented additional testimony through Patricia Rose. Richard Refshauge, President, represented the employer and presented additional testimony through Mike Lien, General Manager. Exhibits A, B, C and One through Nine were received into evidence.

ISSUE:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ashley Moorman was employed by All Iowa Contracting as a full-time accountant from September 17, 2007 until May 15, 2008, when she voluntarily quit.

Ms. Moorman and others performed their work in a dysfunctional work environment. The employer lacked funds and had to borrow money to make payroll. The employer allowed General Manager Mike Lien to smoke in the workplace, which consistently subjected Ms. Moorman and a coworker to the affects of second-hand smoke. The employer allowed sexually explicit magazines to be displayed in areas of the workplace where Ms. Moorman and another female coworker could not avoid them. The employer allowed workers to abuse and kill a raccoon in the workplace and then left the animal's blood on the floor where Ms. Moorman could not avoid it. The employer neglected maintenance and/or repair of its restroom(s), which resulted in restroom facilities being unavailable to Ms. Moorman and others during the winter months. General Manager Mike Lien and President Richard Refshauge routinely used profane and/or offensive language in the workplace.

The final incident that prompted Ms. Moorman to quit the employment occurred on May 15, 2008. On that day, Ms. Moorman presented President Richard Refshauge with paychecks to be signed. Mr. Refshauge became infuriated when he realized that Ms. Moorman had included

vacation pay for two employees, construction worker Eric Rogers and General Manager Mike Lien. The vacation payouts significantly increased the amount of the employer's payroll. The day before, Mr. Refshauge had borrowed money from a bank to make payroll. Prior to borrowing the money, Mr. Refshauge had asked Ms. Moorman for the payroll amount. Ms. Moorman had not included the vacation payouts in the payroll figure she had provided to Mr. Refshauge. Mr. Lien had directed Ms. Moorman to include vacation pay in his check. Mr. Rogers had told Ms. Moorman that Mr. Refshauge had approved the vacation pay to be included in his check. After Mr. Refshauge began to sign the payroll checks, he went to Ms. Moorman's work area with the paychecks in hand. Mr. Refshauge yelled at Ms. Moorman, "Jesus Christ, what the fuck is this? How are these hours so fucking high? No fucking way." Mr. Refshauge threw the paperwork on Ms. Moorman's desk. Mr. Refshauge then stormed out of the office. Ms. Moorman went to General Manager Mike Lien's office and told him that Mr. Refshauge was upset about the amount of the payroll expense. Mr. Lien responded, "Oh well." Ms. Moorman discerned that Mr. Refshauge had neglected to sign two paychecks/vouchers.

When Mr. Refshauge re-entered the office, Ms. Moorman told Mr. Refshauge there were two more vouchers to be signed. Mr. Refshauge again became infuriated. Mr. Refshauge said, "More? Who in the fuck do you think you are? I don't know what you and Eric [Rogers] have going on in this office with all the mud on the floor." Mr. Refshauge was insinuating that Ms. Moorman and Mr. Rogers were having a personal relationship at the employer's expense. Ms. Moorman attempted to explain that she had been told the vacation payouts were approved. Mr. Refshauge replied, "I don't give a fuck what you were told, I own this fucking company. From this point forward, no one signs a motherfucking check but me." Mr. Refshauge continued to throw a tantrum in Ms. Moorman's work area by throwing a pen and shoving a chair. Mr. Refshauge returned a moment later and yelled at Ms. Moorman, "You don't fucking run this company." Mr. Refshauge shook some paperwork in Ms. Moorman face, and the paperwork made contact with Ms. Moorman's cheek. Mr. Refshauge then stormed out, got in to his vehicle and left. Ms. Moorman then went to Mr. Lien's office, told Mr. Lien she could no longer work in the environment, and left the workplace.

Approximately a week before Ms. Moorman quit, she met with Mr. Lien and Mr. Refshauge to raise the concerns she had about her working conditions. Ms. Moorman expressed that she could no longer tolerate the profane, offensive language, the yelling or the slamming of doors. Ms. Moorman referenced the female coworker who had quit without notice a few weeks before and the fact that Ms. Moorman had to perform that person's work in addition to her own. Ms. Moorman expressed concern that she had to route accounting matters through General Manager Mike Lien, rather than dealing with Mr. Refshauge regarding such matters. This meeting followed one or more prior similar meetings.

During the hiring process, Ms. Moorman had represented to the employer that she had a Masters in Business Administration from Upper Iowa University and had business experience that prepared her to fulfill the employer's accounting needs. The employer concluded that Ms. Moorman required no additional training to master her duties. The employer learned during the employment that Ms. Moorman was not performing, or negligently performing some of her assigned duties. The dysfunctional work environment and dysfunctional work relationships contributed to Ms. Moorman's inability to fulfill her duties. After Ms. Moorman separated from the employment, the employer contacted Upper Iowa University to see whether Ms. Moorman had earned an M.B.A. from that institution. The employer had the education institution run a search, but did not know the surname Ms. Moorman had when she attended the educational institution. The employer and the educational institution concluded, perhaps erroneously, that Ms. Moorman had not attended the educational institution.

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).

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). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority. Deever v. Hawkeye Window Cleaning, Inc. 447 N.W.2d 418 (Iowa Ct. App. 1989). Just as the employer had the right to expect decency and civility from its employees, Ms. Moorman had a right to expect decency and civility from the employer.

The greater weight of the evidence in the record establishes intolerable and detrimental working conditions that would have prompted a reasonable person to quit the employment. Regardless of Ms. Moorman's credentials, ability, or performance, the evidence indicates that the employer behaved in an abusive manner toward Ms. Moorman. Ms. Moorman had no obligation to further endure the employer's abuse and a reasonable person would have quit the employment.

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

DECISION:

The Agency representative's June 9, 2008, reference 02 decision is reversed. The claimant 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/pjs