

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

BONNIE MCCULLOUGH
3765 YANKEE AVE
AUBURN IA 51433

DONS DIESEL REPAIR
PO BOX 122
AUBURN IA 51433

Appeal Number: 04A-UI-01230-ET
OC: 12-28-03 R: 01
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 28, 2004, reference 04, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 25, 2004. The claimant participated in the hearing. Andrea Gansemer, Manager/Secretary, participated in the hearing on behalf of 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 part-time secretary for Don's Diesel Repair from April 3, 2003 to October 17, 2003. At the time of hire the employer did not have an office for the claimant and Owner Don Gansemer told her he was going to get an office ready for her, but he had to reach an agreement with the owner of the office space adjacent to the employer's premises. The claimant's desk was in the shop where vehicles were being repaired. The area was not well ventilated and the claimant suffered headaches and sore throats from the fumes. She complained to Mr. Gansemer about the exhaust and told him she was going to quit October 1, 2003, if she did not have an office but the employer did not have an office for the claimant by the time she left her employment. The claimant was also dissatisfied because Mr. Gansemer did not pay her mileage when she went to pick up parts. The employer had an account at a local gas station and told the claimant she could fill her car there once a week but the parties did not have an established mileage agreement. The employer had a truck available for the claimant to use most of the time but the claimant usually chose not to use it because it was "greasy," as described by Annie Gansemer, the owner's wife and manager/secretary of the business. At the end of September or the beginning of October 2003 the claimant returned to work on a Monday and found a drawing of herself on a sticky note in her desk depicting her "naked on all fours" with the caption, "Spank the monkey or not?" She told Mr. Gansemer about the picture and he said a mechanic's girlfriend drew the picture and he (Mr. Gansemer) told her to put it in the claimant's desk because he thought she "would get a rise out of it." He then told the claimant to throw it away and she did but later retrieved it from the trash. The claimant had complained to Mr. Gansemer about comments of a sexual nature directed toward her by other employees as well as his friends and customers. Mr. Gansemer told the employees to "stop harassing" the claimant in "July, August or September" but also stated he could not control what the employees did while he was gone. On October 17, 2003, Mr. Gansemer was on a service call and the two mechanics were each working on trucks with the doors closed and the vehicles running. The air was white with fumes and the claimant told the mechanics to open the doors or turn the trucks off and they told her to open the door herself. Mr. Gansemer returned around noon, shortly after the mechanics left for lunch. The claimant told him she needed to talk to him and complained about the fumes. Mr. Gansemer was upset that the trucks were not done. The claimant told him she was not going to put up with the fumes and if it did not stop she was going to quit. Mr. Gansemer stated, "You'll never quit. You have it too good here. I'll write you a check." He then stated he did not "have time for this shit" and the claimant left for lunch and a doctor's appointment. She went to a self-service car wash and shortly after pulling in she heard a truck engine and looked up to find Mr. Gansemer blocking the entrance and a friend of his in another truck blocking the exit, which frightened the claimant. Another car pulled in and Mr. Gansemer peeled out, followed by his friend. The claimant went to her husband's job site and waited two hours in the parking lot for him to get off work because she was afraid to go home. Later that day she left a message on Mr. Gansemer's answering machine stating she quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment with 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.

871 IAC 24.26(2), (3), (4) provide:

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:

(2) The claimant left due to unsafe working conditions.

(3) The claimant left due to unlawful working conditions.

(4) The claimant left due to intolerable or detrimental working conditions.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code Section 96.5-1. 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 dissatisfaction with the work environment is not good cause. 871 IAC 24.25(21). Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). While the employer told the claimant at the time of hire he was trying to get her an office, he failed to do so during the six months she was employed there and consequently she was forced to work out in the shop, where the repairs were being made, in a room often saturated with exhaust fumes. The "ventilation system" apparently consisted of opening the door when trucks were running, but the mechanics often resisted doing so, and even when the doors were open there were still fumes present. Mr. Gansemer's failure to get the claimant an office resulted in her having to work in an unsafe and intolerable working environment because she was forced to breath exhaust fumes in a confined space and that jeopardized her health and was likely an OSHA violation as well. With regard to the sexual harassment claim, the administrative law judge concludes that the preponderance of the evidence establishes that a hostile work environment existed within the work place. The claimant made Mr. Gansemer aware of the situations as they occurred and while he apparently talked to the mechanics on one occasion, he participated in the situation with the naked drawing of the claimant by at least telling another employee to put it in her desk and then laughed about it and said he thought she would "get a rise out of it." Mr. Gansemer's reaction to a blatant incident of sexual harassment and his statement that he could not control what his employees did while he was gone demonstrates that Mr. Gansemer not only condoned the sexual harassment by his failure to take swift action against the offending parties but also participated in some of the inappropriate comments and statements and did not take sufficient action to stop the harassment experienced by the claimant on several occasions. The claimant has established that the working conditions were unlawful, intolerable and detrimental and consequently the administrative law judge concludes her leaving was for good cause attributable to the employer. Benefits are allowed.

DECISION:

The January 28, 2004, reference 04, decision is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

je/kjf