

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

GWEN K BARTMESS
1619 - 6TH ST
BOONE IA 50036

MOORMAN ENTERPRISES INC
56780 - 241 ST 253 #2
PO BOX 1939
AMES IA 50010-1939

Appeal Number: 04A-UI-11576-JT
OC: 10/03/04 R: 01
Claimant: Appellant (1)

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 Quit

STATEMENT OF THE CASE:

The claimant, Gwen Bartmess, appealed an unemployment insurance decision dated October 20, 2004, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A hearing was held on November 16, 2004, in Des Moines, Iowa. The parties were properly notified about the hearing. Gwen Bartmess participated in the hearing with a witness, Tracy Davis. Patti Moorman participated in the hearing on behalf of the employer with a witness, Matthew Moorman. Exhibits One and Two were admitted into evidence at the hearing.

FINDINGS OF FACT:

Employer, Moorman Enterprises, Inc., operates a Service Master cleaning and fire restoration business out of Ames, Iowa. Claimant, Gwen Bartmess, worked for the employer as a fire technician from June 1, 2001 to June 28, 2004. Patti Moorman was the claimant's immediate supervisor. Bartmess is related to Patti Moorman by marriage. At the time of Bartmess' employment with Moorman Enterprises, the company employed several individuals who were related, one way or another, to Moorman.

Tensions between Bartmess and Moorman Enterprises reached a breaking point over the weekend of June 26-27, 2004. Moorman and her husband had plans to travel out of town during the period of June 26-28, 2004. However, the employer had entered into a contract to clean up a fire-damaged bar in Stanhope, Iowa. The clean-up project was expected to last a number of days, but needed to progress in a timely fashion so that the building could be inspected for insurance reimbursement purposes. The nature of the employer's business sometimes requires weekend work to respond to emergencies or meet project deadlines. Bartmess was aware of this fact throughout her period of employment.

On Friday, June 25, 2004, Moorman met with Bartmess and three or four other employees to discuss the work schedule for that weekend. One employee in attendance was Alana Robinson, who is Moorman's sister and who had been with Moorman Enterprises for about two weeks. Another employee in attendance was Tracy Davis, who is related to Bartmess by marriage. At the meeting on June 25, 2004, Moorman reached an understanding with Bartmess and the other employees that they would work on the clean-up project in Stanhope on both Saturday, June 26, 2004, and Sunday, June 27, 2004. Each of the employees agreed to the weekend work schedule. Bartmess, who had the most training and had been with the employer the longest, was left in charge of the project and other office operations.

On Saturday, June 26, 2004, Bartmess and three or four other employees did in fact work on the clean-up project in Stanhope from approximately 8:00 a.m. to approximately 2:00 p.m. However, prior to leaving the work site on Saturday, Bartmess and the other employees reached an agreement amongst themselves that none of the employees would work at the site on Sunday, June 27, 2004, but would instead continue the clean-up work the following Monday. The decision not to work on Sunday was reached despite the fact that Bartmess and Davis were available to work on Sunday and two other employees had partial availability for work on Sunday. The decision not to work on the Sunday was also reached despite the agreement the employees entered into with Moorman on June 25, 2004.

Bartmess did not contact Moorman regarding the decision not to work on Sunday. Bartmess apparently had the ability to contact Moorman. Moorman had apparently advised Bartmess not to contact her over the weekend unless it was an emergency. Prior to leaving the Stanhope work site on Saturday, Bartmess advised the bar owner of the decision not to work on Sunday. The bar owner apparently did not object to calling off the Sunday work.

At some point on Saturday evening, June 26, 2004, Moorman contacted Bartmess by telephone to enquire why the employees would not be working on Sunday. Moorman was upset that the employees had not complied with the agreement reached on Friday, June 25, 2004, that the employees would work on both Saturday and Sunday. Moorman told Bartmess she had received a telephone call from an upset insurance adjuster, who disapproved of the decision to call off work on Sunday. Apparently, the insurance adjuster needed the clean-up project to progress quickly to the point where the structure of the building could be examined.

The telephone call from Moorman to Bartmess lasted approximately ten minutes. During the conversation, Moorman may have somewhat raised her voice in frustration, but did not yell, engage in any name-calling, or utter profanity. Moorman did however make it clear that her instructions to work on Sunday were not subject to amendment by Bartmess individually or as part of a group decision amongst the employees. The telephone conversation ended with the understanding that Bartmess would report to work at 7:00 a.m. on Monday, assist with cleaning the shop, and then return to work on the project in Stanhope.

Bartmess was upset when she arrived at work on Monday, June 28, 2004, at 7:00 a.m. On that morning, Bartmess rode to work with Tracy Davis. During the ride to work, the two women discussed the call Bartmess had received from Moorman on Saturday evening. Davis shared with Bartmess her belief that their co-worker Alana Robinson had been the person who notified Moorman about the decision to call off the Sunday work. Bartmess believed that Robinson had made critical comments about Bartmess to Moorman over the weekend and on prior occasions.

At approximately 7:15 a.m. on Monday June 28, 2004, co-worker Robinson arrived for work. The mere arrival and presence of Robinson at the work place was upsetting to Bartmess. Robinson did not do anything at that time and place to cause Bartmess to become upset. Nonetheless, Bartmess announced to her co-workers, "I'm done. I don't want to deal with it anymore. I'm done. I'm leaving." and "I can't handle it anymore. I can't be here. I have to go." Bartmess then telephoned her mother to request a ride from the work place, left her keys to the business in one of the work vans, and left the work place with her mother.

The claimant quit her employment on June 28, 2004, because she was upset with Moorman's treatment of her on June 26 and she mistakenly believed that it was Robinson who had instigated Moorman's reprimand of her.

Fifteen minutes after Bartmess left the place of employment, Tracy Davis contacted Moorman to advise her that Bartmess had quit. During the conversation, Moorman commented to Davis that Moorman would not be inclined to take Bartmess back.

Though Bartmess was scheduled to work on the subsequent days, she did not return to the employment. Bartmess eventually returned to the place of employment to drop off her work uniform and pick up her final paycheck.

REASONING AND CONCLUSIONS OF LAW:

The issue in this matter is whether the claimant voluntarily quit employment without good cause attributable to the employer. Both the claimant and the employer characterized the separation from employment as a voluntary quit rather than a discharge. The applicable Iowa law is set forth below.

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

The administrative law judge holds that the evidence has failed to establish that the claimant voluntarily quit for good cause attributable to the employer.

As the claimant, Bartmess has the burden of proving that her voluntary quit was for good cause attributable to Moorman Enterprises and that she should therefore be eligible for unemployment insurance benefits. Iowa Code section 96.6-2.

Under Iowa Workforce Development rules that apply to this case, Bartmess' voluntarily quit is presumed to be without good cause attributable to Moorman Enterprises for any one of the following reasons. Bartmess quit because she was generally dissatisfied with the work environment. She quit because she had a recurring personality conflict with Moorman. She quit because she felt she was unable to work with Robinson. She quit rather than perform the duties Moorman had assigned to her. Finally, she quit within 15 minutes of reporting to work on Monday after having been verbally reprimanded on Saturday evening. See 871 IAC 24.25-21, 22, 6, 27, and 28.

Under Iowa Workforce Development rules that apply to this case, Bartmess has failed to show that her voluntary quit was for good cause attributable to the employer for the following reasons. She did not prove any change in the contract of hire. 871 IAC 24.26-1. She did not show that intolerable or detrimental working conditions existed. 871 IAC 24.26-4. Moorman's treatment of Bartmess on June 26 was not intolerable or detrimental because Moorman had the right to be critical of the crew's decision not to carry out her instructions and Moorman's conduct toward Bartmess was not overly harsh. The final straw that caused Bartmess to walk off the job and quit was the mistaken assumption that Robinson was the instigator of the phone call she received from Moorman. Prior to voluntarily quitting her employment, Bartmess failed to put Moorman Enterprises on notice of alleged intolerable or detrimental conditions, failed to warn the company that she would quit if the situation was not addressed, and failed to give Moorman a reasonable opportunity to address any legitimate grievances. See Suluki v. EAB, 503 N.W.2d 402 (Iowa 1993), Cobb v. EAB, 506 N.W.2d 445 (Iowa 1993), and Swanson v. EAB, 554 N.W.2d 294 (Iowa App. 1996).

DECISION:

The decision of the representative dated October 20, 2004, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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