

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARLENE S MILLER
Claimant

APPEAL NO. 09A-UI-02811-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ENGLESON ABSTRACT CO INC
Employer

OC: 01/18/09
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 16, 2009, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on March 17, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. John Slump participated in the hearing on behalf of the employer. Exhibits One through Four were admitted into evidence at the hearing.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer as a clerk-typist from September 19, 1997, to September 26, 2008. John Slump, the owner and manager, was the claimant's supervisor.

The claimant informed John Slump in early September 2008, that she was leaving employment in September late September because she couldn't stand the stress of working in the office and was considering moving to North Carolina. Slump asked the claimant if she thought she would feel better the day after she left; the claimant replied that she hoped so.

The claimant left employment after a series of events during the last couple of years of her employment that caused her to find working conditions intolerable to her. The events are recounted below.

Coworkers and managers made comments suggesting that she should quit employment or retire. Another clerk-typist, Kendall Morrison, asked her in the spring of 2008 how she could continue working in business when no one liked her. The claimant replied that she was not working to make friends; she was working to make money. Morrison also commented "why don't you just quit if you don't like the way we treat you." The assistance vice president, David Parrot, asked the claimant "why don't you retire?" The claimant responded that she could not afford to retire. Slump witnessed some of these comments but did not intervene.

In late 2007 or early 2008, the claimant was sent to the Pioneer Bank to deliver an abstract. Before she got there, Morriston called the bank and asked an employee to give the claimant a message. Morriston told the bank employee, "Tell the witch to turn her broom around and head north and go to United Escrow to pick up some abstracts." The employee was embarrassed, and the claimant was very offended by the comments. She complained to Slump about what Morriston had said. Slump replied, "If you don't like it, you know what you can do about it." The claimant interpreted this as suggesting she should quit. The claimant felt excluded when Slump attended the Super Bowl in 2008 and bought sweatshirts for all the employees except her.

Profanity was commonplace in the office up until the time the claimant left employment. There were times when Slump received pornographic emails and invited employees to view them on his computer. The claimant complained to Slump that this was inappropriate in the office, but the situation was not corrected. Just before the claimant quit, Slump, Morriston, and another female employee were at a nearby restaurant. Slump asked the women to go to the adult bookstore and purchase a dildo for the claimant because that was what she needed. A waitress overheard the comment and later repeated it to the claimant. This was the last straw for the claimant and she made up her mind to quit.

Although the claimant had plans to move to North Carolina and had talked about retiring, the real reason why she left employment was the detrimental conditions at work that she could no longer tolerate. She did not intend to retire from the workforce, and after she left employment, she began looking for another job.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1. A claimant who quits employment due to intolerable or detrimental working conditions is considered to have quit with good cause. 871 IAC 24.26(4).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly about the comments made to her and conditions at the office. I believe her testimony. Specifically, I believe Morriston made the hateful comment to the Pioneer Bank employee about the claimant. I also believe the claimant complained to Slump. No one deserves to be ridiculed like that; but instead of taking action to stop Morriston's cruel conduct, he suggested that she quit if she did not like it.

Slump was given an opportunity to reply to each of the reasons the claimant gave for quitting. He said generally that her testimony was inaccurate. He did not, however, respond to complaint about pornographic emails being displayed to employees in the office or the comment attributed to him by the waitress. I do not believe that the claimant or the waitress manufactured the comment. This lack of professionalism provided the claimant good cause to leave employment. Finally, I am not surprised that the claimant did not disclose to her real estate agent that she was leaving the employer's abstract company on bad terms. I do not think this outweighs the claimant's credible first-hand testimony under oath that conditions at work caused her to quit.

DECISION:

The unemployment insurance decision dated February 16, 2009, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css