

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

CHRISTINE R GERDES
3597 – 390TH ST
BUFFALO CENTER IA 50424-7614

BENNETT MOTOR EXPRESS MGMT INC
PO BOX 569
MCDONOUGH GA 30253

Appeal Number: 06A-UI-05243-CT
OC: 04/16/06 R: 02
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 Quit

STATEMENT OF THE CASE:

Christine Gerdes filed an appeal from a representative's decision dated May 11, 2006, reference 01, which denied benefits based on her separation from Bennett Motor Express Management, Inc. (Bennett). After due notice was issued, a hearing was held by telephone on June 7, 2006. The hearing was recessed and concluded on June 23, 2006. Ms. Gerdes participated personally and offered additional testimony from Al Gade, Mark Stangl, Jeannie Goode and Anita Calleja. The employer participated by Dawn Denzik, Human Resources Manager; Jim Jorgensen, Terminal Manager; Tom Woodall, Vice President of Operations and Jac Carpenter. The employer was represented on June 23 by Grant Brooker, Attorney at Law.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Gerdes began working for Bennett on November 18, 2002 and worked full-time as a dispatcher. On April 6, 2006, she was briefing others on information she had received from Jac Carpenter concerning new software that was going to be used. Jim Jorgensen was in the doorway of his office and advised Ms. Gerdes that he felt she was stressing out over nothing. Ms. Gerdes responded that she wanted to be able to do her job well when the new software was installed. Mr. Jorgensen approached her workstation and the two became involved in a heated exchange. They were both angry and frustrated. Mr. Jorgensen told her that, if she did not quiet down, "I'll throw your ass out of here." Ms. Gerdes indicated he did not have to as she was quitting. Mr. Jorgensen told her she could take her lunch hour, consider what she wanted to do and return.

Ms. Gerdes had gone to human resources with complaints about Mr. Jorgensen on two occasions. Her first complaint was in the fall of 2004 after she returned from maternity leave. She notified Mr. Jorgensen that she would be away from her workstation in order to express breast milk. He asked her something to the effect of how long it would take to drain "those jugs." The employer resolved the issue by speaking with both individuals. Ms. Gerdes' second complaint was in July of 2005 when she received a poor rating regarding her attendance. She was told she needed to address the issue first with Mr. Jorgensen.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Gerdes was separated from employment for any disqualifying reason. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. Gerdes quit because of Mr. Jorgensen and his conduct towards her. The incident in which he made reference to her "jugs" was over one year before her separation. The employer spoke with both individuals after the incident and there were no further incidents of that nature thereafter. Although Ms. Gerdes disagreed with her evaluation in July of 2005, she did not utilize the chain of command to seek a change.

It appears that the employer maintained a rather relaxed work environment in which employees traded "racy" jokes and sometimes used profanity. It does not appear that Ms. Gerdes shied away from joining in such conduct. However, even in a relaxed work atmosphere, there is a limit to the type of conduct an employee must withstand from a manager. The manager is expected to set the standard for the conduct of others. The manager is expected to use restraint and act in a professional manner at all times. On April 6, Mr. Jorgensen told Ms. Gerdes, "if you don't quiet down, I'll throw your ass out of here." The comment was not made in the privacy of his office but out in an open area where others could hear. At least one other employee overheard his statement. Ms. Gerdes had the right to expect that she would be disciplined in private and not in full view of her co-workers.

Even if Ms. Gerdes was being loud and belligerent, one would not expect a manager to respond in kind. Given the circumstances in which the comment was made, the administrative law judge concludes that Ms. Gerdes was justified in quitting. It is concluded, therefore, that good cause attributable to the employer has been established by the evidence. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated May 11, 2006, reference 01, is hereby reversed. Ms. Gerdes quit her employment for good cause attributable to the employer. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/cs