

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LESLIE J FANNING
Claimant

MENARD INC
Employer

APPEAL 15A-UI-05535-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/15
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 7, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 17, 2015. Claimant participated. Employer participated through Zach Zegarowicz, Second Assistant General Manager and Audra Eisen, Estimator and was represented by Alex Meyers, Attorney at Law. Employer's Exhibits A through E were entered and received into the record. Claimant's Exhibit 1 was entered and received into the record.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a sale associate in the millwork department beginning on October 1, 2014 through April 18, 2015 when she voluntarily quit the job.

The claimant quit for two reasons. First, she was offended by a comment made by Amy, one of her coworkers. On April 17, the claimant asked her manager, if she could leave work early as that was her only way she could get a ride home. Amy overheard the claimant ask the question and told the claimant that it would do her good to walk home because she was overweight. Amy then said that if the claimant did not lose weight she would not live to see her children grow up. The claimant was offended by the comment. The claimant complained to the manager who was there when the comment was made and he told her not to take it personally or to get upset. The claimant complained a few days later to Mr. Zegarowicz, her manager's supervisor, who spoke to Amy. Amy told Mr. Zegarowicz that she did not mean to offend the claimant and would be more careful in the future. By that time the claimant had already quit.

The claimant also complained that two coworkers stole SPIFFS (sales commissions) from her. The employer allowed the employee who gave the quote and performed most of the work on a

sale to obtain the commission. The claimant had not earned any SPIFFS and by her own admission was not really sure how they worked.

On April 16, a customer with a ten-thousand dollar order came into the store. The quote had been prepared by two other employees in January of that year and they had clearly performed the initial work and rework on the order. When the claimant pulled up the quote for the customer she tried to find Jacob whose name appeared on the quote so he could complete the sale and be given credit for the commission. She could not find him so she completed the order. She spent between one and one-half hours up to two hours with the customer and thought she should be entitled to the commission. Under the employer's written policy, it appears she should have been. But as the employer had previously explained to the claimant and to all other employees, they had never applied the commission policy that way as it would not have been fair to give the commission to the employee who just happened to be there when the sale was completed as opposed to the employee who had done all of the "leg work" on the sale.

The claimant complained to Mr. Zegarowicz on April 18 which also happened to be the last day of a major sale for the store. Mr. Zegarowicz had two and one-half times the customer traffic that day and could not stop to instantly deal with the claimant's complaint. He specifically told the claimant that he would address her concern on April 20, Monday, when the human resources coordinator was in the store and he could have her help him. As a member of management Mr. Zegarowicz was not allowed to meet privately with a member of the opposite sex. The employer was willing to deal with the claimant's issue and conduct an investigation, but the claimant gave them no time to do so. The claimant simply was not willing to wait for an investigation to take place, she became angry at that time and voluntarily quit.

Continued work was available for the claimant if she had not quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(6) and (20) provide:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(6) The claimant left as a result of an inability to work with other employees.

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

No workplace is perfect. The one comment unkindly made by a coworker does not rise to the level of creating an intolerable work environment. The employer addressed the situation with the coworker who agreed not to do it again. No threat of physical violence was made and the coworker told the employer she did not mean it to hurt the claimant's feelings.

The SPIFF issue was handled the same way in the store for all employees. Early in the claimant's employment she was told by Laurie how the SPIFFs were handled. In that case Laurie did all the work so the claimant could learn how to do the SPIFF and consequently Laurie took the commission.

The claimant gave the employer no time to investigate her complaint about a SPIFF being taken from her on April 18, before she became angry and quit. Based on the evidence presented at the hearing, it appears as though both Jacob and Laurie performed more work on the sale generating the commission the claimant alleges was stolen from her. The employer did not treat the claimant any differently than any other employee with regard to SPIFFS. The claimant simply did not even give the employer time to investigate her complaint before she quit. The employer clearly applied the SPIFF policy differently than the way the policy is written. They are allowed to do so. The policy was applied the same way to all employees. If the claimant had given the employer time to investigate, she may have been given the commission, however she quit without giving the manager time to act. The claimant has not established that she was treated any differently or that she was entitled to the commission. The claimant's own actions on the day of the sale indicate that she knew Jacob should be given the sale as he had done the quote and the leg work. The administrative law judge concludes the claimant did not establish an intolerable work environment. While claimant's decision to quit may have been based upon good personal reasons it was not a good-cause reason attributable to the employer for leaving the employment. Benefits must be denied.

DECISION:

The May 7, 2015 (reference 01) decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css