

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARRIE L WRIGHT
Claimant

APPEAL NO. 10A-UI-13374-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROSS HOLDINGS LLC
Employer

OC: 08/29/10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated September 21, 2010, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 8, 2010. Claimant participated. Employer participated by Shannon Schmidt, director of operations; and Diana Roberts, corporate office manager. The record consists of the testimony of Carrie Wright; the testimony of Shannon Schmidt; and the testimony of Diana Roberts.

This claim is a duplicate of 10A-UI-13373-VST. The administrative law judge believes that two representative's decisions were issued on the identical claim.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a telemarketer. The claimant worked as a part time telephone sales representative. Her last day of work was August 30, 2010. She quit her job on August 30, 2010.

The events that led to the claimant's termination began on August 27, 2010. The claimant and some of her friends were at a local bar. The claimant was not working at the time. Phil Marlowe, the center manager, saw the claimant and approached her table. He began making a number of comments concerning how "good the claimant looked and that she was dressed "really nice." The claimant was very uncomfortable with what he was saying and she went to the restroom to get away from him. The claimant's friends told her that Mr. Marlowe got agitated and made another comment about the claimant and her sexual practices.

The claimant left the bar and she thought Mr. Marlowe had also gone. He was actually hiding behind a dumpster. He approached the claimant and asked her to come home with him. She refused and said she was going back into the bar.

The claimant's next day of work was August 30, 2010. She did start to make some calls, but became anxious when she realized that Mr. Marlowe would be coming into work soon. She went to her supervisor, Christina Kennedy, to inform her of the sexual harassment. Ms. Kennedy told the claimant that Mr. Marlowe had also harassed her, making comments about her body. She told the claimant to sign a leave of absence form while the complaint was investigated. The claimant was under the impression that Ms. Kennedy had made a complaint, but nothing had been done. The claimant decided that since there had been prior complaints and nothing had been done, that she would not be able to stay and work with Mr. Marlowe. The claimant did provide a statement to the employer about the incident on August 27, 2010.

The employer investigated the matter promptly and within 24 hours, Mr. Marlowe was terminated. The claimant was offered her job back. The employer told the claimant that an attorney would probably be contacting her. The claimant perceived this as a threat to not pursue the matter further. The claimant did not believe she could return under these circumstances and declined the employer's offer. The employer denies having threatened the claimant with an attorney.

REASONING AND CONCLUSIONS OF LAW:

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence is uncontroverted that it was the claimant who initiated the separation of employment in this case. The claimant quit her job due to sexual harassment from her supervisor. The fact that the claimant was sexually harassed is not in dispute. What is in dispute is the events that took place after the sexual harassment.

The claimant credibly testified that she was informed by her supervisor that the supervisor had been sexually harassed as well by Mr. Marlowe. The claimant could have reasonably believed that her complaint would not be taken seriously and that she would have to keep on working with Mr. Marlowe. The claimant did find out that Mr. Marlowe was terminated and the employer did act promptly on her complaint. Where the breakdown in communications occurred is when the employer mentioned that an attorney would be contacting the claimant. The claimant testified that she felt threatened by this comment and that she was being told, in essence, not to pursue this complaint further. Ms. Schmidt, who purportedly made the attorney comment, denied that she ever said anything about an attorney.

It is difficult to reconcile these two different versions of what happened since the claimant is adamant that Ms. Schmidt brought up the attorney and Ms. Schmidt denied having said anything about an attorney. The claimant said that she was frightened and sent an email to the employer concerning the attorney and said that she was not going to speak with the employer further until she got her own attorney. The claimant apparently never asked what the employer meant by the attorney statement and the employer never tried to put the claimant's mind at ease. There was a breakdown in communication over this issue.

The administrative law judge concludes that the claimant could have reasonably believed that while the employer offered to reinstate her, that reinstatement meant she had to drop the sexual harassment complaint. The greater weight of the evidence is that Ms. Schmidt did make a comment about an attorney getting involved. Although this is a close issue, the administrative law judge concludes that the claimant voluntarily left but with good cause attributable to the employer. It was the employer's actions that primarily led the claimant to conclude that she could not continue the employment relationship. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated September 21, 2010, reference 02, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs