

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JILL A STERNAT
Claimant

TEREX USA LLC
Employer

APPEAL 16A-UI-11986-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/09/16
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 26, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 22, 2016. Claimant participated. Employer participated through Michael Pembroke, Human Resources Manager and was represented by Stephen Zaks of Employer's Edge, LLC. Employer's exhibit one 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 full-time as a senior accounts receivable specialist beginning on December 16, 2013 through October 6, 2016 when she voluntarily quit.

In March 2016 the claimant was promoted. After her promotion she was given additional work duties to complete based upon the business needs of the employer. The claimant did not like the data entry work she was being required to complete and believed that the additional job duties were causing her to not complete what she thought were her more important job duties in a timely manner. At no time did the employer ever discipline her for not completing her work in a timely manner.

During a meeting on July 22 employees, including the claimant, were being told that other employees had just lost their jobs as the plant was being closed. One employee told Ms. Marzen that their group/team needed more employees. Ms. Marzen snapped at the group of employees and told them that as others had just lost their jobs comments like that were not needed. Ms. Marzen made the comment while looking in the claimant's direction. After the meeting ended the claimant went up to Ms. Marzen to tell her that she was not the employee who had made the comment that their group/team needed more employees. Ms. Marzen

snapped at the claimant and told her to “lose the attitude.” Ms. Marzen immediately apologized to the claimant, who left the room crying. The claimant reported the incident to human resources department. The claimant wanted to take an early retirement package that had been offered back in January, but she was told it simply was no longer available.

The claimant continued to work for two more months but did not think Ms. Marzen was chatting with her or talking to her enough. At the claimant’s request when she began her employment she was allowed to work from 7:00 a.m. until 3:30 p.m. so she could attend a fitness class. Another supervisor changed the claimant’s hours so that she worked until 4:00 p.m. to meet business needs. On September 22 Ms. Marzen wanted the claimant to change her hours so that she would work until 4:45 p.m. The change was requested only to meet business needs. The claimant complained that her hours had been changed to 4:00 p.m. only a few weeks before. When the claimant made that comment, Ms. Marzen said, “fine, I will stay.” The claimant turned in her notice of resignation the next day as she thought Ms. Marzen’s comment was creating a hostile workplace. Ms. Marzen did not require the claimant to change her work hours.

The claimant put in her notice of resignation on the same day. 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(21) provides:

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 section 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 section 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:

(21) The claimant left because of dissatisfaction with the work environment.

Iowa Admin. Code r. 871-24.25(22) provides:

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 section 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 section 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:

(22) The claimant left because of a personality conflict with the supervisor.

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).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

The administrative law judge is not persuaded that Ms. Marzen created a hostile or intolerable work environment for the claimant. The claimant could only point to two incidents between her and Ms. Marzen, some two months apart. Ms. Marzen had just told the claimant's group that the plant was shutting down when she 'snapped' at the claimant. Ms. Marzen immediately apologized. The second incident was when the claimant complained after being asked to change her work hours. In that situation her supervisor offered to work late for her so she would not have to. The administrative law judge concludes that the claimant simply has not established that those two incidents gave rise to good cause attributable to the employer for leaving the employment. The claimant simply did not get along with Ms. Marzen which is more properly characterized as a personality conflict. 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 October 26, 2016, (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/pjs