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

JETAUN T JOHNSON
145 S WESTMINSTER
IOWA CITY IA 52245

DILLARD DEPARTMENT STORES INC
ATTN BILLIE TREAT
1600 CANTRELL RD
LITTLE ROCK AR 72201-1110

Appeal Number: 04A-UI-12695-LT
OC: 04-04-04 R: 03
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)

Iowa Code §96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the November 18, 2004, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on December 20, 2004. Claimant did participate. Employer did participate through Mary Hall.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time sales associate from September 20, 2004 through November 2, 2004 when she quit. On November 1, 2004, Kevin Franks, supervisor of women's shoes, was angry after a coworker took a two-hour lunch and gathered employees on the public sales floor, including claimant. He said, "that 'I have a baby shit, doesn't make a difference to me'" and did not mention the long lunch or any other examples of absenteeism or tardiness knowing that

claimant is the only employee in that department with a child. He continued on, "I don't give a fuck if any of you motherfuckers come to work" and threatened their work hours. Claimant called and spoke to Mary Hall on November 2 and said she was upset with her manager and asked if she could be transferred elsewhere in the store. Hall said she could not do so until she had worked there for 90 days without exception. Claimant explained in detail what Franks had said and Hall responded that he could not have said that because he has a daughter. Employer did not conduct an investigation with anyone other than Franks who generally acknowledged the language and context of the meeting.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant quit with good cause attributable to the employer.

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.

871 IAC 24.26(4) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (4) The claimant left due to intolerable or detrimental working conditions.

"The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." Myers v. EAB, 462 N.W.2d 734 (Iowa App. 1990).

Inasmuch as an employer can expect professional conduct and language from its employees, claimant is entitled to a working environment without abusive, obscene, name-calling directed at her by citing her child as an example when she had not contributed to the two-hour long lunch issue or any other specific incidents. Even had she been tardy, an employee should not have to endure a public dressing down with abusive language directed at them either specifically or generally in order to retain employment any more than an employer would tolerate it from an employee. In accordance with Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993), claimant gave her notice to the personnel department representative, Mary Hall, who expressed her disbelief that claimant's supervisor would do such a thing in spite of Franks' later general admission to the language and conduct. Employer's further refusal to make an exception to the 90 day transfer policy was also unreasonable given that claimant would have to continue to work under Franks' intolerable supervision while awaiting that time threshold. Benefits are allowed.

DECISION:

The November 18, 2004, reference 04, decision is reversed. Claimant quit the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

dml/tjc