

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER M WHITTINGTON

Claimant

APPEAL NO: 14A-UI-09161-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAZOLI'S RESTAURANTS LLC

Employer

OC: 08/10/14

Claimant: Respondent (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 26, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on September 24, 2014. The claimant participated in the hearing. Phil Holmes, Area Supervisor, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time general manager for Fazoli's Restaurants from January 27, 2002 to July 23, 2014. She voluntarily quit her job due to harassment by Area Supervisor Phil Holmes.

Mr. Holmes was hired as a general manager in July 2013 and was promoted to area supervisor December 27, 2013. The claimant felt that as soon as Mr. Holmes became her supervisor he "hated" her. In April 2014 Mr. Holmes held a meeting with the seven general managers in the area as well as the catering manager. During the meeting Mr. Holmes ridiculed the claimant regarding the numbers in her restaurant. Sales had dropped in the claimant's area due to increased competition from new restaurants. Mr. Holmes went over the sales numbers of the general managers present and then asked them to rate themselves on their leadership abilities. When it was the claimant's turn to rate herself Mr. Holmes laughed at her and asked if she really thought she was a leader. The claimant stated yes and Mr. Holmes laughed at her and then told a story about a teacher he had who gave a lecture on leadership and said if there were 300 people in a room and the leader asked all of them to follow him and one person questioned why than the purported leader was not actually a leader. Mr. Holmes then turned and looked at the claimant, made his fingers into the sign of a gun by having his thumb pointing up and his forefinger pointing out with his other fingers curled under to the palm of his hand and stated,

"I say boom. Shoot Jen (the claimant) in the face and no one will ever question me again." The claimant found his words and actions very disconcerting. The following day the regional catering manager went to the claimant's restaurant and told her she had to leave. The claimant asked why and he stated she had too much support in the company and among the other general managers and that was a threat to Mr. Holmes job security. He went on to say that if the claimant did not have sex with Mr. Holmes her termination would occur sooner rather than later.

Over the course of the last six month or seven months of the claimant's employment; the claimant peers, assistant managers, and employees repeatedly told the claimant that Mr. Holmes asked them to write statements against the claimant for "anything they could think of" that was negative.

After the general manager meetings, Mr. Holmes would often hold team building exercises. After the general managers' meeting in Fort Dodge in approximately October 2013, Mr. Holmes and the other male general managers all went to a strip club for the team building exercise. In November 2013 the meeting was held at Mr. Holmes house followed by a team building exercise involving drinking. The claimant does not drink and was not comfortable in that setting so she left. Mr. Holmes then told her she was not part of the team because she did not attend the team building exercises.

Mr. Holmes told two general managers he was promoting, before they were officially promoted, his views on the claimant and told them supporting the claimant was not in their best interest. He said they could either be part of his team with all of the other general managers or part of the claimant's team, which no one else was a part of.

Two months prior to the claimant's separation Mr. Holmes moved from Ankeny to within three blocks of the claimant's home in Des Moines and repeatedly reminded her of how close he now lived to her. He would say, "Jen. Jen. Did I tell you I live right behind Dahl's now and I can be here in two minutes and I will be here all the time?"

During the last year of the claimant's employment, anyone on her team who was a good worker and had a good relationship with the claimant was transferred from the store, including her managers.

The claimant eventually met with Mr. Holmes and recalled the meeting during which he made the sign of a gun with his fingers and told him that disturbed her and was very inappropriate. He became very angry and told her she was not to question him.

The claimant was one of four salaried managers who contacted the corporate human resources office about the claimant and his behavior. She told human resources about the finger gun incident and Mr. Holmes comment about shooting the claimant. The other three managers asked the claimant how to reach the human resources office. The claimant also had contacted human resources because early in 2014 Mr. Holmes had the claimant's restaurant do a catering event worth between \$700.00 and \$1,000.00 for his daughter's track team and then he made the decision that the catering would be a donation. The claimant was asked to do caterings for Mr. Holmes' family and friends at least three or four times during 2014. After the claimant contacted human resources Mr. Holmes came into her store and told her what happens in their area stays in their area and informed the claimant she could only talk to him about issues and problems. He specifically told her she could never talk to his supervisor anytime for any reason and told the claimant his supervisor did not like her. He started the same time Mr. Holmes started and the claimant had not been able to develop a relationship with him.

Mr. Holmes was also affecting the claimant's store's financial numbers by spending an excessive amount on maintenance without telling the claimant prior to her receiving large bills for different services he contracted. One example cited by the claimant occurred when a safe repairman came to replace a part on the store's safe and then told the claimant Mr. Holmes also wanted to replace the outside keypad. The claimant had already replaced that and was still within a two year warranty for that part of the safe. She called Mr. Holmes to tell him it had already been replaced and was still under warranty and he told her she could not ever question him. After the large expenditures, he would then criticize her store because its profits were not as great as he expected after the deduction of the maintenance costs he incurred for the store.

Toward the end of her employment the claimant believed someone with a key was entering the restaurant after it closed for the night. Sometimes when she came in the following day the lights would be on and one time there was a full soda sitting on the counter. The claimant had mentioned the situation to a trusted assistant manager and Mr. Holmes but Mr. Holmes did not appear to be concerned about it. The claimant suspected a different assistant manager and he happened to be in the store unexpectedly one morning at 8:00 a.m. when the claimant arrived. Soon after that day, the alarm company had been called automatically because of a breach in the security of the store and when the company called the claimant it told her not to go to the store at that time because it believed an intruder was still in the restaurant. The claimant went anyway and the suspected assistant manager and the electrician used by the store were both there. The assistant manager told the claimant the electrician pulled on the door so hard the alarm went off. The claimant did not believe that was what happened. The electrician approached the claimant and told her the assistant manager had been in the building. The police arrived moments later. When Mr. Holmes arrived she told him the assistant manager was lying about what happened and that he was in the building without any reason to be in there. She stated there were several occasions that she found the contents of the safe were slightly off in the morning and she felt it was obvious someone had been in the building.

On July 23, 2014 a few days after the police were at the store investigating a possible break-in, Mr. Holmes went to the claimant's store and questioned her about a deposit from the previous week. The claimant told him they needed to figure out who was entering the store and what they were looking for. Mr. Holmes began shaking in anger and told the claimant to "Get your fucking phone and get all of your fucking managers in here in the next fucking hour." The claimant was scared of Mr. Holmes and decided to voluntarily quit rather than subject herself to his behaviors. Consequently, the claimant resigned effective July 23, 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment with 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

Mr. Holmes made the claimant's work environment intolerable and detrimental. Shortly after becoming area supervisor, during a meeting of all general managers in the area, he made the sign of a gun with his fingers, pointed them at her face, and said "I say boom. Shoot Jen in the face and no one will question me again." His actions were incredibly immature, unprofessional, and inappropriate, and designed to scare her and make her uncomfortable around him during the course of her employment. He berated and belittled her at every turn, he undermined her with her staff and her peers, and he interfered with the operations of her store and then criticized her for not making a greater profit. He dismissed her concerns about someone, possibly one of the assistant managers, entering the store at night after closing and potentially stealing from the employer but was willing to accuse her of mismanagement of the books. Finally, he was shaking with anger July 23, 2014 and after telling her to "Get your fucking phone and get all of your fucking managers in here in the next fucking hour," the claimant told one of her assistant managers she was "very, very scared" and decided to resign rather than face more abuse from Mr. Holmes.

Under these circumstances, the administrative law judge concludes the claimant has demonstrated that her leaving was for good cause attributable to the employer, as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The August 26, 2014, reference 01, decision is affirmed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/can