

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRYSTAL B CALLAWAY-NEPPL**  
Claimant

**APPEAL NO. 09O-UI-06593-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PAMIDA STORE OPERATING CO LLC**  
Employer

**Original Claim: 02/01/09  
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Pamida Store Operating Company filed a timely appeal from an unemployment insurance decision dated February 26, 2009, reference 01, that allowed benefits to Krystal B. Callaway-Neppl. Due notice was issued for a hearing that was held March 31, 2009, before Administrative Law Judge James Elliott. Ms. Callaway-Neppl did not participate in that hearing because she did not receive the notice. Judge Elliott issued a decision in favor of the employer on March 31, 2009. Ms. Callaway-Neppl appealed that decision to the Employment Appeal Board, which, in a decision dated April 28, 2009, remanded the case for further proceedings. After due notice was issued, a hearing was held May 28, 2009, with Ms. Callaway-Neppl participating and presenting additional testimony by Cheryl Hasty. Pharmacy Manager Amber Miller and District Manager Russ Lee participated for the employer.

**ISSUE:**

Did the claimant leave work with good cause attributable to the employer?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Krystal B. Callaway-Neppl was employed as a pharmacy technician by Pamida Store Operating Company from August 4, 2008, until she resigned January 16, 2009. She was a full-time employee. On January 15, 2009, as Ms. Callaway-Neppl was working alongside Cheryl Hasty, Amber Miller approached them saying, "I am sick of this fucking talking." She also said, "I am sick of this shit." Later that day, Ms. Callaway-Neppl told district manager Russ Lee of the incident. At Mr. Lee's request, she followed up his telephone call with an e-mail. Ms. Callaway-Neppl resigned because of Ms. Miller's actions. The incident occurred at the pharmacy counter. Ms. Miller was loud enough that customers and coworkers were aware of what was going on.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the claimant left work with good cause attributable to the employer. She did.

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.

The essence of this case is to determine if Ms. Callaway-Neppl or Ms. Miller's recollections of the events are the more accurate. Their testimony cannot be reconciled. Mr. Lee testified that the testimony of Ms. Callaway-Neppl and that of Ms. Miller were consistent with what they had initially told him. While Ms. Hasty professed not to recall the exact language being used, she did testify that she was so offended that she considered walking out. Further, Ms. Miller did not contradict Ms. Callaway-Neppl's testimony that the incident was so loud that others could hear.

While one is disqualified from unemployment insurance benefits following resignation because of a reprimand, one is allowed unemployment insurance benefits following resignation due to intolerable or detrimental working conditions. Employees need not meekly accept profanity from supervisors, just as supervisors need not accept profanity from their subordinates. The administrative law judge concludes that is more likely than not that Ms. Miller's language was demeaning and inappropriate. Benefits are allowed.

**DECISION:**

The unemployment insurance decision dated February 26, 2009, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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