

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACEY SHREVE
Claimant

APPEAL NO: 08A-UI-03511-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

KERRY INC
Employer

**OC: 02-10-08 R: 02
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Leaving
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed from the March 17, 2008, reference 04, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder April 23, 2008 and continued May 13, 2008. The claimant participated in the hearing with former production worker/boyfriend Brent Hoth and was represented by Attorney Tom Duff. Amanda Bulley, Regional Human Resources Manager, participated in the hearing on behalf of the employer on April 23, 2008, but was not available at the number provided May 13, 2008, and no further hearing was held as the claimant had entered her evidence and been cross-examined April 23, 2008. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issue is whether the claimant's appeal is timely and whether she 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: A disqualification decision was mailed to the claimant's last-known address of record on March 17, 2008. The claimant received the decision March 31, 2008, four days after the appeal was due. Consequently, allowing ten days from that date makes the due date April 10, 2008, the date the claimant's appeal was received. For that reason the administrative law judge concludes the claimant's appeal is timely.

The claimant was employed as a full-time production worker for Kerry Inc. from October 29, 2007 to February 6, 2008. The claimant was being sexually harassed by co-worker Shane Rowry. Several times when the claimant bent over to clean parts Mr. Rowry would call another employee over and say, "Hey, look at this" referring to the claimant's butt and they would both laugh and walk away. He also made comments about the claimant improving the "view" in the area. He would also give her jobs that required her to bend over and say, "Oh that looks nice." The claimant's boyfriend also worked at the plant and overheard Mr. Rowry's comments about the claimant's anatomy and Mr. Rowry often told him he was a lucky guy. At the Christmas party Mr. Rowry asked the claimant's boyfriend if he wanted to sleep with his wife and

Mr. Rowry could sleep with the claimant. He also told him he was willing to step on whoever he needed to in order to get what he wanted. On January 30, 2008, the claimant lodged a sexual harassment complaint with the employer. The employer told her to stay home January 31, 2008, while it investigated her complaint. On February 1, 2008, the employer told the claimant it could neither confirm nor deny her allegations and consequently no action would be taken against Mr. Rowry and the claimant did not return to work after that date although she called in February 3, 4 and 5, 2008.

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 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 claimant voluntarily quit her job by failing to return to work after the employer told her it could not substantiate her sexual harassment complaint. 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 dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). 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. Rowry's comments and actions did constitute sexual harassment. While the employer investigated the incidents it could not confirm nor deny the allegations and therefore placed the claimant in the position of having to return to work closely with her harasser. Under these circumstances the administrative law judge concludes that the claimant's work environment was intolerable and detrimental and her leaving was for good cause attributable to the employer as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The March 17, 2008, reference 04, decision is reversed. 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

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