

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

KARI L SHINE
2733 HEATHER LN
BETTENDORF IA 52722

DAVENPORT COMMUNITY
SCHOOL DISTRICT
ATTN SUSAN K HERZMANN
1606 BRADY ST
DAVENPORT IA 52803

Appeal Number: 04A-UI-03457-H2T
OC 02-29-04 R 04
Claimant: Appellant (1)

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)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 23, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 13, 2004. The claimant did participate along with her husband, Mike Shine. The employer did participate through Linda McClurg, Associate Director of Human Resources, Rita Watts, Director of Human Resources, and Mike Scannell, Program Administrator Kimberly Center West. Claimant's Exhibit A was received. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a teacher of language arts for students with behavioral disabilities

full time beginning August 18, 2002 through March 13, 2004 when she voluntarily resigned her job. The claimant alleged that a coworker, Steve Foster, was sexually harassing her. Mr. Foster was allegedly making comments about the size of his penis, masturbation, going to strip clubs to watch former students strip, and having oral sex in classrooms. The claimant never complained to any management official, including anyone at her particular school or any one at the school district's human resources office until January 17, 2004. The claimant stopped reporting for work on January 14, 2004 due to the alleged harassment. The claimant refused to return to work. She did not file a formal sexual harassment complaint until after she received a notice from the district that she was going to be discharged on February 27, 2004. Thereafter the claimant, who was represented by counsel, agreed to a settlement with the school district wherein her leaving would be considered for personal reasons. The claimant then withdrew her complaint of sexual harassment against Mr. Foster. At hearing the claimant admitted that she had a relationship with Mr. Foster in June 2003 that involved consensual kissing. The claimant never told Mr. Foster that she found his comments offensive, nor did she ever ask him to stop.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without 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 was obliged to notify the employer of a work-related problem prior to quitting and to give the employer an opportunity to address the problem. Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa 1996).

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). When the claimant refused to continue working she made it clear that her intention was to quit her job. The claimant was obligated to notify the employer of the harassment to give the employer a chance to investigate, and correct the problem prior to her quitting. The claimant did not do that, she just stopped showing up for work. What is most troubling to the administrative law judge is the fact that the claimant admits a consensual relationship involving kissing months prior to allegations of sexual harassment. It is not credible that the claimant would find the alleged comments made by Mr. Foster so offensive; yet engage in a consensual relationship with him that involved kissing. No evidence is offered other than the testimony of the claimant to establish sexual harassment. No other witnesses testified that they had heard the comments Mr. Foster was allegedly making. In light of the relationship between the claimant and Mr. Foster, as well as the lack of corroboration and the claimant's failure to complain prior to quitting, the administrative law judge concludes the claimant's leaving was without good cause attributable to the employer. Benefits are denied.

DECISION:

The March 23, 2004, reference 01, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are denied

tkh/b