

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARA SHONDEL
Claimant

APPEAL NO: 15A-UI-13494-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALANIZ LLC
Employer

OC: 11/08/15
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 30, 2015, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on January 19, 2016. The claimant participated in the hearing with Attorney Matthew Glasson. Jordan Dziulko and Dixie Crane, Human Resources Coordinators, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment for 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 mail shop operator for Alaniz from December 28, 2014 to October 19, 2015. She voluntarily left due to intolerable and detrimental working conditions.

In late August or early September 2015 the claimant's regular supervisor, Chris Olson, was on a two week vacation. The claimant was switching to a new machine and stock handler "Tim" was setting it up. The claimant was standing next to Coordinator "Chrystal" when the Tim reached over and touched the claimant's butt before proceeding to move closer to her. The claimant moved further away and Tim eventually left. After he left the claimant asked Chrystal if she saw Tim touch her butt and Chrystal said she did not and instructed the claimant that she should have said something to him about it and walked away. The claimant reported the incident to her temporary supervisor, Dan Butcher, and Coordinator "Marcy." The employer uses a three color light system and Tim or someone else in his position was supposed to come to the claimant's machine if she turned the yellow light on but he came many times when she had other colored lights on. Marcy attempted to help by asking other stock handlers to help the claimant rather than allowing Tim to go to her machine when she turned a yellow light on indicating she needed the assistance of a stock handler but Tim continued coming to the claimant's machine.

The claimant was very uncomfortable around Tim after that incident. Over the next two weeks Tim attempted to grab her again but missed and then walked away. Tim also spent an unnecessary amount of time hanging around the claimant's machine during work hours. When Mr. Olson returned from vacation the claimant related to him what had occurred with regard to Tim's actions and Mr. Olson stated he "would keep an eye on him" and told her to let him know if there were other problems before mentioning they may need to consider a refresher class regarding sexual harassment in the workplace. The claimant also asked to be transferred to a position where she would not have to work directly with Tim but the plant manager told her to write a letter about the issues that caused her to request a transfer but he had not responded to the claimant's letter as of the time she left her employment.

Because Tim repeatedly came to the claimant's machine even when her yellow light was not on and a transfer did not appear to be forthcoming she became increasingly more uncomfortable and on October 12, 2015, decided to voluntarily quit her job because of the problems she was experiencing with Tim. The claimant did not call or report for work October 13, 16, 17 or 18, 2015, and the employer concluded the claimant voluntarily left her job.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons 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.

Iowa Admin. Code r. 871-24.26(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 law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that she intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. Hy-Vee, Inc. v. Employment Appeal Board and Diyonda L. Avant, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The claimant notified the employer of her problems with Tim but despite the fact she told Dan Butcher, Chris Olson, Chrystal and Marcy, that Tim touched her butt, the employer did not do anything of substance to correct the situation, either in disciplining Tim or moving him or the claimant. The claimant asked for a transfer but the employer had not acted on her request at the time she left. The claimant subsequently quit due to those conditions. Consequently, benefits are allowed.

DECISION:

The representative's decision dated November 30, 2015, reference 01, is reversed. The claimant voluntarily quit 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/pjs