IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SHANNON J JUNIKU
Claimant

MURPHY CONSTRUCTION CO
Employer

APPEAL NO. 07A-UI-06227-H2

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05-27-07 R: 02
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 14, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 18, 2007, in Des Moines, Iowa. Claimant did participate along with her witnesses, Siglinde Schuster and Erich Schuster. Employer did participate through Pat Murphy, Office Manager; Lin Sheehey, Bookkeeper; Jake Rodgers, former employee; Dominic Leon, Project Coordinator; and Shawn Clark, Laborer; and was represented by Robert M. Benton, Attorney at Law. Claimant's Exhibits A and B were entered and received into the record. Employer's Exhibits One through Fifteen were entered and received into the record.

ISSUE:

Did the claimant voluntarily quit her employment with good cause attributable to the employer?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as an office assistant, full-time, beginning April 25, 2005 through May 21, 2007, when she voluntarily quit.

The claimant alleges she quit because of intolerable sexual harassment in the workplace, specifically by coworkers Jake Rodgers and Shawn Clark. While the claimant alleges that she reported the harassment to Linn Sheehey, who is the daughter of the owner and the sister of manager Pat Murphy, Ms. Sheehey denies that the claimant ever complained to her about how either Mr. Rodgers or Mr. Clark treated her.

Claimant's Exhibit B depicts a picture of Mr. Rodgers' penis that he admits he sent via company cell phone to the claimant's company cell phone on March 27, 2007. The claimant did not complain about the picture to anyone until after she had quit her job. When she received the picture from Mr. Rodgers she sent him back a test message that read "wow". When Mr. Murphy learned of the allegation about the picture after the claimant had quit, he asked Mr. Rodgers about it. Mr. Rodgers initially denied sending the picture, but one day later admitted to Mr. Murphy that he had in fact sent the picture. Mr. Murphy told him that had he not already turned in his notice to quit, Mr. Murphy

would have fired him for doing so. Mr. Rodgers alleges that he believed the claimant wanted him to send her an explicit picture and that she never told him that it offended her or that she wanted him to stop sending her text messages. The employer's records indicate that the claimant and Mr. Rodgers sent text messages often, including the night that Mr. Rodgers sent her the explicit picture.

When the claimant arrived at the hearing in the lobby area she told Mr. Rodgers that the hearing was not about him and that he was not the one she was out to get.

The claimant also alleges that Mr. Clark was harassing her by asking her out on dates for drinks. Mr. Clark denies ever pursuing a romantic relationship with the claimant.

Both the claimant and Ms. Sheehey testified that they had a close, good working relationship. The nature of the picture is so shocking that it is hard to believe that the claimant would not have shown it to Ms. Sheehey if it offended her. Ms. Sheehey's testimony that had she learned of the picture, she would have reported it to Pat Murphy, is credible.

The claimant ceased showing up for work in late May but called in sick for May 18, 21, 22, 23, and 24. The employer learned she had quit her job when they received her claim for unemployment insurance benefits, which was filed during the week beginning May 27, 2007.

The employer does not monitor what messages or pictures are sent between employees. The employer had no way of knowing that Mr. Rodgers had sent a picture of his genitalia to the claimant. The claimant never complained to either Ms. Sheehey or to Mr. Murphy that she wanted any employee to treat her any differently. The claimant continued to work with both Mr. Rodgers and Mr. Clark after the explicit picture was sent to her.

The claimant knew how to save text messages to her computer but did not save any of the offensive text messages that were sent to her by Mr. Rodgers or Mr. Clark.

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.

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(21). 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.

The U.S. Supreme Court has held that a cause of action for sexual harassment may be predicated on two types of harassment: (1) Harassment that involves the conditioning of concrete employment benefits on sexual favors, and (2) harassment that, while not affecting economic benefits, creates a hostile or offensive working environment. Meritor Savings Bank v. Vinson, 477 U.S. 57, 62 (1986).

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.

871 IAC 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.

Claimant was not required to give notice of his intention to quit due to an intolerable, detrimental or unsafe working environment. Hy-Vee, Inc. v. Employment Appeal Bd., No. 86/04-0762 (Iowa, Nov. 18, 2005).

The administrative law judge is not persuaded that the claimant ever complained to any member of management, including Ms. Sheehey, about how she was being treated by Mr. Clark or Mr. Rodgers. The employer had no idea that an explicit picture had been sent by Mr. Rodgers to the claimant. The employer had no reason to believe from the claimant's daily actions, including her own comments to her coworkers, that she felt she was being sexually harassed. The administrative law judge is not persuaded that Mr. Clark ever said or did anything to the claimant that could be classified as sexually harassing. The claimant waited two months to quit and continued to work after the picture from Mr. Rodgers was sent to her. She indicated in the lobby before the hearing to Mr. Rodgers that she was not upset with him and that he was not the one she was out to get or that the hearing was about. The administrative law judge does not find it credible that an employee who quits because of sexual harassment that includes naked pictures would not be upset with the harasser. The claimant made it clear that Mr. Murphy, the owner, in no way sexually harassed her. The claimant has the burden to prove an intolerable work environment. Her testimony at the hearing was inconsistent with her actions in the workplace. If the claimant was so upset by the treatment, then why did she not ever go to Mr. Murphy to complain? Her lack of complaint or action for two months, including her continued relationship with Mr. Rodgers, belies the claimant's real feelings. Under the conflicting testimony, including testimony about the claimant's own comments and actions in the workplace, the administrative law judge is not persuaded that the claimant has met her burden of proof to establish an intolerable workplace, despite the picture sent by Mr. Rodgers. Thus, benefits must be denied.

DECISION:

The June 14, 2007, reference 01, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has been overpaid benefits in the amount of $2,429.00.

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Teresa K. Hillary
Administrative Law Judge

_____
Decision Dated and Mailed

tkh/kjw