

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHERYL A BONESCHANS
Claimant

APPEAL NO. 10A-UI-16285-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ASSOCIATED MILK PRODUCERS INC
Employer

OC: 10/24/10
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 18, 2010 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on January 12, 2011. Claimant participated. Employer did not respond to the hearing notice instructions and did not participate.

ISSUE:

The issue is whether claimant voluntarily left the employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full time as a separator operator from 1998 and was separated from employment on October 28, 2010. She quit her job because another evaporator operator, Clete, ran into her with a loaded chemical barrel on a cart rather than ask her to move. She did not report it to the employer. She had a scratch on her leg. He used foul language towards her and called her names on a daily basis after she returned from non-work-related cancer treatment. She had reported the language to her supervisor but the conduct did not improve. Prammel also tried to report concerns about how Clete was treating claimant but no action was taken.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant quit 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.

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.

“The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made.” *Myers v. EAB*, 462 N.W.2d 734 (Iowa App. 1990).

Inasmuch as an employer can expect professional conduct and language from its employees, claimant is entitled to a working environment without being the target of abusive, obscene, name-calling. An employee should not have to endure name calling and foul language or physical assault from another employee in order to retain employment any more than an employer would tolerate it from an employee. Benefits are allowed.

DECISION:

The November 18, 2010 (reference 01) decision is reversed. Claimant quit the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css