IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RANDIE L GROTLUSCHEN
Claimant

ALS CORNER OIL CO
Employer

APPEAL NO. 12A-UI-04509-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/18/12
Claimant: Respondent (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 13, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 14, 2012. Claimant Randie Grotluschen participated and presented additional testimony through Kyle Taylor and Candy Cleveland. Cindy Tiefenthaler represented the employer and presented additional testimony through Chris Drake. Exhibits One and Two were received into evidence.

ISSUE:

Whether Ms. Grotluschen's voluntary quit was 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 employer operates a gas station/convenience store in Carroll. Randie Grotluschen was employed by Al's Corner Oil Company as full-time cook from March 2010 until March 22, 2012, when she voluntarily quit. Ms. Grotluschen's immediate supervisor was Store Manager Candy Cleveland. Chris Drake supervised stores that included the one where Ms. Grotluschen worked. Ms. Drake became actively involved in store operations in December 2011.

On the morning of March 22, 2012, Cindy Tiefenthaler, Operations Manager, telephoned the store where Ms. Grotluschen worked to question her about the cigarette break she had just taken and to discuss the need for her to get busy with work. The employer has surveillance cameras in the store that allow Ms. Tiefenthaler to observe events within the store in real time. Ms. Grotluschen had been talking to her supervisor, Ms. Cleveland, at the time Ms. Tiefenthaler called. A short while after Ms. Tiefenthaler called to speak with Ms. Grotluschen, Ms. Grotluschen called back to discuss two matters with Ms. Tiefenthaler. The first was the matter of the raise she thought was due on the anniversary of her employment. Ms. Grotluschen had last received a raise in August 2011. Ms. Tiefenthaler told Ms. Grotluschen that she would not eligible for consideration for a raise until August 2012, due to the maternity leave Ms. Grotluschen had taken in 2011, and that whether she got a raise would depend on a number of factors including increased store sales.

While Ms. Grotluschen was on the phone with Ms. Tiefenthaler, she mentioned that Supervisor Chris Drake had been engaging in name calling directed at Ms. Grotluschen. Ms. Tiefenthaler told Ms. Grotluschen that she needed to quit fighting against Ms. Drake. Ms. Grotluschen told Ms. Tiefenthaler that it was hard to smile and say yes ma'am when Ms. Drake was making demeaning statements. Ms. Grotluschen told Ms. Tiefenthaler that Ms. Drake has said Ms. Grotluschen was too stupid to do her job, that Ms. Grotluschen did not know anything, and that Ms. Drake had referred to Ms. Grotluschen and other employees as stupid fucking bastards. Ms. Tiefenthaler implied that Ms. Grotluschen might have done something to warrant one or more of the comments.

Shortly after the second conversation with Ms. Tiefenthaler, Ms. Grotluschen told Ms. Cleveland that she could no longer work for the employer and that she was quitting. Ms. Grotluschen then left the store and returned only to get personal items and as a customer.

Ms. Drake had in fact said many demeaning and inappropriate things to Ms. Grotluschen and others. These included referring to Ms. Grotluschen and other employees as stupid fucking bastards who could not even do donuts right. These included telling Ms. Grotluschen that Ms. Drake did not know anybody who was that stupid, after Ms. Grotluschen spread ice melt in a manner Ms. Drake found unacceptable. Ms. Drake's comments included telling Ms. Grotluschen that she guessed Ms. Grotluschen was too dumb to bake cinnamon rolls. Ms. Drake was in the habit of uttering demeaning, inappropriate comments directed at Ms. Grotluschen and other employees whenever Ms. Drake visited the store where Ms. Grotluschen worked. Ms. Grotluschen had reported the conduct to Ms. Cleveland after most of the episodes. Ms. Cleveland believed the reports credible, but did not believe she could do anything about Ms. Drake's conduct.

REASONING AND CONCLUSIONS OF LAW:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context

may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). So too does a worker have the right to expect similar decency and civility from supervisors.

When a worker quits due to dissatisfaction with the wage, but knew the wage ahead of time, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(13).

The evidence in the record indicates two reasons for Ms. Grotluschen's voluntary quit. The first was her belief that the employer was discriminating against her with regard to a pay increase based on her prior use of maternity leave. The weight of the evidence indicates that Ms. Grotluschen had the same wage since August 2011 and had not been promised a raise at any particular point. If the quit had been based solely on dissatisfaction with the wage, the quit would have been without good cause attributable to the employer.

The evidence indicates that Ms. Drake's demeaning, inappropriate comments were at least as important to Ms. Grotluschen as the wage issue when Ms. Grotluschen decided to quit. Ms. Drake created intolerable and detrimental working conditions through her repeated use of offensive, demeaning comments directed at Ms. Grotluschen and others. On this point, the administrative law judge found Ms. Drake's denials wholly lacking in credibility. On the other hand, Ms. Cleveland displayed remarkable candor and courage in testifying about Ms. Drake's inappropriate comments, Ms. Grotluschen's report of the comments to Ms. Cleveland, and Ms. Cleveland's belief that there was nothing she, the store manager, could do anything to make Ms. Drake's offensive comments stop. Ms. Grotluschen reasonably concluded that the situation with Ms. Drake was not going to improve and quit the employment.

Ms. Grotluschen quit the employment for good cause attributable to the employer. Accordingly, Ms. Grotluschen is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Grotluschen.

DECISION:

The Agency representative's April 13, 2012, reference 01, decision is affirmed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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