

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY SMITH
Claimant

APPEAL NO. 08A-UI-06579-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALGREEN CO
Employer

**OC: 06/15/08 R: 03
Claimant: Appellant (1)**

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Mary Smith (claimant) appealed an unemployment insurance decision dated July 11, 2008, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Walgreen Company (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 4, 2008. The claimant participated in the hearing with Caula Gardner and Attorney Katie Ervin Carlson. The employer participated through Mary Finney, Executive Assistant and Michael Thiele, Employer Representative. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time assistant manager from February 2, 2007 through June 2, 2008 when she voluntarily quit her employment by turning in a written resignation. She quit because she felt she was working in a hostile work environment. The claimant felt she was harassed and discriminated against because of her sexual orientation. She contends the hostile work environment created health problems and interfered with her diabetes and asthma. She was having panic attacks and vomiting blood which she attributed to the stress of work. The claimant testified her doctor recommended to her that she quit her employment. She does not have a worker's compensation claim.

The claimant's specific complaints were against her store manager. She felt the store manager yelled at her all the time and gave her poor performance ratings. Mary Finney, the executive assistant, met with the claimant and her store manager a few times to work out some issues. Ms. Finney believed the issues were resolved in those meetings. The store manager went on

maternity leave on approximately May 7, 2008 or May 15, 2008 and was not involved in the final incident.

The claimant attended a meeting in Des Moines, Iowa, on May 20, 2008 and the employer met with her on approximately May 21, 2008 to discuss a sexual harassment complaint. A co-employee had complained to the district office that the claimant had put her hands on the co-employee's hips and moved them down towards her pelvic region. Approximately one year prior, there had been another sexual harassment complaint from a different co-employee. The first case was an allegation of a body rub and the employer found the allegation to be true. The claimant was on a final warning and she went through sexual harassment training. After the new complaint, the claimant was suspended without pay for seven days. The district manager determined the second allegation to be true but did not find sufficient evidence to discharge the claimant. The claimant was notified on May 28, 2008 that she was not discharged but placed on another final warning. She was advised that she could not touch anyone and would have to go through sexual harassment training again. The claimant contends she was told she had to walk through the stores with her arms crossed but the employer denies that claim. Her physician took her off work on May 29, 30 and 31. The claimant turned in her written resignation on June 2, 2008.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by submitting her written resignation on June 2, 2008. She contends she quit due to a hostile work environment which created medical problems. The evidence does not support the claim of a hostile work environment. The claimant's manager with whom she had problems was not even working at the time of her separation. It appears the claimant was upset about the sexual harassment complaints against her but both these complaints came from her co-employees and cannot be considered the basis of harassment, particularly when the employer found the allegations to be true.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

DECISION:

The unemployment insurance decision dated July 11, 2008, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are

withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css