

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA M BEBENSEE
Claimant

APPEAL NO. 09A-UI-15776-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHRISTIAN RETIREMENT HOMES INC
Employer

**Original Claim: 09/20/09
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 13, 2009 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on November 23, 2009. Claimant participated and was represented by Mark Fowler, Attorney at Law. Employer participated through Food Service Director Susan Friederich and Human Resources Director Gina Houzenga.

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 cook and was separated on September 25, 2009. Cooks Jessica Holman and Pam McWayne began doing claimant's prep work on September 18, 2009. She told them individually not to do so. Holman raised her voice and told claimant she was going to beat her up if she did not shut up. McWayne told her to "shut the fuck up." Later, claimant and her roommate, cook Ann Rodriguez, trapped Holman in the walk-in cooler for awhile. Claimant reported the encounters to Administrator Burt Bigen the same day, he said she could go home, and they would meet with Susan the next week. They met on Wednesday, September 23, and Friederich began the meeting by asking her if she had been having problems in the last several months, since she had been moody. Claimant replied, "Fuck this," gave her the finger, and left the office. Friederich tried to follow her but could not catch up with her. Claimant assumed Friederich intended to discipline her but continued work was available. Claimant was not scheduled on September 24 and employer expected her on the September 25 but she did not show and returned her keys through Rodriguez. Friederich did not have prior notice of claimant's problems with others (within a few weeks prior to the separation, McWayne pushed carts into claimant and slammed things down on her table) but other kitchen employees in addition to Holman and McWayne had complained to Friederich that claimant had been very moody the past few weeks and they felt like they were walking on egg

shells around her. Claimant had lost her temper in the past and “left in a huff” and slammed doors before when Friederich had tried to talk to her.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without 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 24.25(6), (21), (22), and (28) provide:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (6) The claimant left as a result of an inability to work with other employees.
- (21) The claimant left because of dissatisfaction with the work environment.
- (22) The claimant left because of a personality conflict with the supervisor.
- (28) The claimant left after being reprimanded.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Giving Friederich the finger, saying “fuck this,” and leaving the office before the meeting was complete was a clear indication of claimant’s intention to quit her job and reveals a flaw in her credibility that she is not the meek and mild-mannered victim as her testimony would have one believe. Since claimant was not able to get along with her coworkers, quit in anticipation of a reprimand, and would not wait for employer to finish discussing the issues claimant had with her coworkers, her decision to quit was without good cause attributable to the employer. Benefits are denied.

DECISION:

The October 13, 2009, reference 01, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw