

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETTY L TONDERUM

Claimant

APPEAL NO. 11A-UI-11186-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRESCENT ELECTRIC SUPPLY COMPANY

Employer

OC: 07/24/11

Claimant: Appellant (5)

Iowa Code section 96.5(1) – Voluntary Quit

Iowa Code section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Betty Tonderum filed a timely appeal from the August 15, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 10, 2011. Ms. Tonderum participated. Matt Goyette, Branch Manager, represented the employer. Exhibits One through Four were received into evidence.

ISSUES:

Whether the claimant's voluntary quit was for good caused attributable to the employer.

Whether the claimant has been able to work and available for work since she established her claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Betty Tonderum was employed by Crescent Electric Supply Company as a full-time clerical worker from 1997 and last performed work for the employer on May 25, 2011. From April 2011 onward, Mr. Tonderum's immediate supervisor was Matt Goyette, Branch Manager. Prior to that, Ms. Tonderum's immediate supervisor had been Jeff Sundall. Mr. Sundall was Branch Manager prior to Mr. Goyette taking over that position. Prior to March 2010, Mr. Sundall would sometimes kick Ms. Tonderum's desk when he passed by. This conduct did not occur after March 2010. Mr. Sundall sometimes referred to Ms. Tonderum as bouncing Betty. Ms. Tonderum cannot remember when Mr. Sundall last uttered that or similarly demeaning remarks.

After Mr. Goyette became Branch Manager, Mr. Sundall continued with the company as an inside salesperson. But Mr. Sundall no longer had any supervisory authority over Ms. Tonderum and did not work on projects with Ms. Tonderum. The two did still work at the same facility. It was common knowledge that Mr. Sundall had a negative attitude in the workplace. Mr. Sundall's negative attitude was not specifically directed toward Ms. Tonderum.

In May 2011, Ms. Tonderum requested a three-week leave of absence. Mr. Goyette approved the request. As far as Mr. Goyette knew, the requested leave was based on turmoil Ms. Tonderum was experiencing in her marriage and based on her desire to go visit a brother in Illinois. A regional manager had asked Ms. Tonderum whether Mr. Sundall's continued presence in the workplace would keep her from returning at the end of the leave. Toward the end of the three-week leave, Ms. Tonderum requested another week. Ms. Tonderum told Mr. Goyette that she wanted to visit a parent's grave. Mr. Goyette assumed Ms. Tonderum was still resolving matters with her husband. Ms. Tonderum had inquired whether Mr. Sundall was still employed. Mr. Goyette advised he was.

On June 20, 2011, Ms. Tonderum submitted a written resignation by e-mail. Ms. Tonderum provided June 29, 2011 as her official last day. Ms. Tonderum did not mention Mr. Sundall. The employer continued to have work available for Ms. Tonderum.

After Ms. Tonderum separated from the employment, she traveled to Wyoming, Illinois, and Indiana. Ms. Tonderum has since settled in Indiana. For the last month, Ms. Tonderum has been helping a friend with serious health issues. Ms. Tonderum has continued to make two job contacts per week.

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).

On the other hand, when an employee voluntarily quits due to a personality conflict with a coworker, a supervisor, or due to dissatisfaction with the work environment, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(22), (6) and (21).

The weight of the evidence in the record establishes that Ms. Tonderum voluntarily quit the employment for personal reasons and not for good cause attributable to the employer. The record indicates that the desk kicking stopped more than a year prior to Ms. Tonderum's quit. Ms. Tonderum could not recall the last time Mr. Sundall said something offensive to her. During

the last several weeks of the employment, Mr. Sundall had no authority over Ms. Tonderum's employment. The weight of the evidence indicates that the work situation was actually improving for Ms. Tonderum. The evidence indicates that during the last several weeks of the employment Mr. Sundall was an unpleasant presence in the workplace, but nothing more. The weight of the evidence indicates that there were issues outside the employment that factored into the request for the leave and the separation from the employment.

The administrative law judge concludes that the quit was not prompted by a medical situation that necessitated Ms. Tonderum leaving the employment to avoid harm. The administrative law judge also concludes that the quit was not based on intolerable or detrimental working conditions. The quit was instead prompted by dissatisfaction with the workplace environment, a desire to no longer have to share a workplace with an unpleasant coworker and former supervisor, and personal matters outside of work. Ms. Tonderum is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Tonderum.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The weight of the evidence indicates that Ms. Tonderum has been able to work and available for work since she established her claim for benefits.

DECISION:

The Agency representative's August 15, 2011, reference 01, decision is modified as follows. The claimant voluntarily quit the employment without good cause attributable to the employer.

The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged. The claimant has been able to work and available for work since she filed her claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css