

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JUDITH K HEATH**  
Claimant

**APPEAL NO. 13A-UI-13052-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**INTERNATIONAL PAPER COMPANY**  
Employer

**OC: 10/20/13**  
**Claimant: Appellant (2)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Judith Heath filed a timely appeal from the November 21, 2013, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on December 16, 2013. Ms. Heath participated and was represented by attorney Jeffrey Tronvold. Doug Meyer represented the employer and presented testimony through Dyanna Davidson and Joseph McGovern. The administrative law judge took official notice of the administrative file documents submitted and generated in connection with the fact-finding interview and received Exhibits B and C into evidence.

**ISSUE:**

Whether Ms. Heath's voluntary quit was for good cause attributable to the employer. It was.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Judith Heath was employed by International Paper Company as a full-time floater from July 2012 until May 22, 2013, when she voluntarily quit in response to verbal abuse and harassment from a male coworker. Ms. Heath had two immediate supervisors, Brian Staner and James Griffin. Mr. Staner supervised the employer's corrugated area. Mr. Griffin supervised the employer's converting area. Because Ms. Heath's position involved filling in for other employees during breaks or absences, Ms. Heath worked for both supervisors on a regular basis. Due to the nature of her position, Ms. Heath was assigned to work at several different machines and alongside many different coworkers. Throughout the employment, Ms. Heath worked the overnight shift from 11:00 p.m. to 7:00 a.m. This was the shift that worked best for Ms. Heath in light of her parental responsibilities.

The final incident that triggered Ms. Heath's quit started with a male coworker's mistreatment of her on May 20, 2013. During the shift, the coworker, Jake, yelled offensive and degrading comments at Ms. Heath because she was not working fast and efficiently enough to satisfy him. The coworker invaded Ms. Heath's personal space, towered over Ms. Heath, and screamed insults. The coworker utterances included the following: "What the fuck is going on," "are you fucking stupid," "are you retarded," "are you brain-damaged," and "are your parents related?"

Mr. Griffin was present at least for part of Jake's tirade. Mr. Griffin's intervention in the matter was limited to moving in between the two employees. Later in the shift, Ms. Heath spoke to Mr. Griffin about the incident and Mr. Griffin's response was that she needed to stand up for herself, that that was just the way Jake was, and that she should improve her work performance so that she could earn Jake's respect.

The final incident followed an incident with the same coworker a week earlier when Jake used his cell phone to take an unflattering photo of Ms. Heath's backside while she was leaning over a machine performing her work duties. The photo showed Ms. Heath's underwear and part of her bare rear. Jake shared the photo with Mr. Griffin and both men had a laugh at Ms. Heath's expense. Jake showed Ms. Heath the photo. Later in the shift, Mr. Heath spoke to Mr. Griffin. Mr. Griffin again told Ms. Heath that she needed to stand up for herself and that if she wanted the photo deleted, she would have to speak to Jake.

Ms. Heath had documented other offensive, inappropriate conduct in the workplace. The employer has a television set in the break room. Ms. Heath took photos of the TV screen to document the sex toy infomercial that her two supervisors were watching in the break room. The supervisors were present, but unphased, when Ms. Heath used her cell phone in their presence to document the infomercial.

After the final incident involving Jake, Ms. Heath complained to Dyanna Davidson, Human Resources Assistant. Ms. Davidson had Ms. Heath forward the photos of the TV screen. Ms. Davidson offered to move Ms. Heath to another shift, but Ms. Heath declined such a move because it would negatively impact her parental responsibilities. The employer offered Ms. Heath no other remedy.

#### **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).

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The two supervisors and the coworker, Jake, were conspicuously absent from the hearing.

The evidence in the record is sufficient to establish that Ms. Heath was being harassed and verbally abused by a male coworker and that her two supervisors were complicit in that harassment and abuse. The coworker's conduct was part of a misogynistic work environment in which the supervisors were complicit. The conduct was sufficient to create intolerable and detrimental working conditions that would prompt a reasonable person to leave the employment. The only remedy the employer provided was ineffectual in addressing the offending conduct and detrimental to Ms. Heath. Ms. Heath was under no obligation to acquiesce in a substantial change in the conditions of the employment, the change in shift, as a condition of continuing in the employment or as a condition of escaping harassment and verbal abuse. See 871 IAC 24.26(1) (regarding voluntary quits for good cause attributable to the employer in response to substantial changes in the conditions of the employment).

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

**DECISION:**

The Agency representatives November 21, 2013, reference 02, decision is reversed. 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

jet/pjs