

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MARY K PRATT
3102 N 15TH LOT #99
FT DODGE IA 50501

NORTHWOODS LIVING INC
1470 – 21ST AVE N
FT DODGE IA 50501

Appeal Number: 04A-UI-06448-BT
OC: 05/16/04 R: 01
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Northwoods Living, Inc. (employer) appealed an unemployment insurance decision dated June 8, 2004, reference 01, which held that Mary Pratt (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 8, 2004. The claimant participated in the hearing. The employer participated through Tina Leonard, Deb Keoftner-Trexler, Vicki Freeman and Melissa Smits.

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 developmental assistant from February 6, 2001 through May 5, 2004. She quit her employment as a result of intolerable working conditions. Shortly before the separation date, the claimant complained to the employer about a supervisor's inappropriate conduct. The claimant presented a detailed and dated list of indiscretions committed by Melissa Smits, her supervisor. The list dated back to February 2004. She had previously informed at least four other intermediate supervisors (Tina, Mike, Tiffany and Greg) of her complaints and these supervisors each told her to write it down so it could be used to get rid of this other supervisor. When the claimant discussed reporting it to Deb Keoftner, the ICSMR Services Director, she was told that this woman was a good friend of Ms. Smits and probably would not believe the claimant. The claimant had finally had enough when she reported it to Ms. Keoftner.

The problems began in February 2004 when a man was hired that was a father to the claimant's daughter's baby. Ms. Smits had requested to be advised of any problems with this man, but when the claimant or others complained about him sleeping on the job, among other complaints, Ms. Smits became angry. The more information the claimant gave to Ms. Smits about this male employee, the more Ms. Smits would find something wrong with the claimant's work. Some of the specific complaints about Ms. Smits are that she was sleeping, would use profanity in a derogatory manner and would make sexual remarks about the residents, who are mentally challenged. On February 26, 2004, Ms. Smits came over to the house where the claimant was working and told her that other people were gossiping about the claimant. That same day, she told a resident to "get your fucking ass back in bed." Also on that day, the claimant was explaining to Ms. Smits to be careful around a particular resident as she was combative and Ms. Smits said "she fucking hits me and I'll hit her back." On February 29, 2004, she told the claimant, "I'm gonna put it on your fucking evaluation that you're a gossiper" and then, "I'm not going to make up your fucking evaluation." The claimant needed Ms. Smits on March 15, 2004 and another co-worker went to get her but could not wake up Ms. Smits. On March 17, Ms. Smits came out of a male resident's room and said he wanted to feel her up. On March 18, 2004, Ms. Smits was talking to the claimant on the telephone and in front of several employees, Ms. Smits said to the claimant, "Do you have your fucking period?" On April 29, 2004, Ms. Smits was using the employer's computer to receive "dirty jokes" from her sister who used to work there. These were only some of the complaints the claimant had about Ms. Smits.

Ms. Keoftner-Trexler and Vicki Freeman, another supervisor, met with the claimant on May 5, 2004 to discuss the complaints. The employer repeatedly testified that their investigation was not complete at that point and no final determination had been made. Once the claimant arrived, the employer called Ms. Smits into the room. The employer began to criticize the claimant for not bringing these complaints forward in a more timely manner but went on to tell the claimant that no other staff member corroborated her complaints. Ms. Keoftner-Trexler then told the claimant she was a "spy", that she did not believe the claimant and that she did believe Ms. Smits, as she had hired her and Ms. Smits was a good employee. Feeling intimidated and harassed by the three supervisors, the claimant voluntarily quit her employment.

REASONING AND CONCLUSIONS OF LAW:

The first issue that needs to be addressed is how the Administrative Law Judge arrived at the statement of facts since the testimony was completely contradictory as to what happened in the

meeting on May 5, 2004. The findings of fact reflect a resolution of the disputed factual issues in this case based on a careful assessment of the credibility of the witnesses and reliability of the evidence. Although the employer had more witnesses to testify as to its version of the facts, the claimant's testimony had the ring of truth. The most significant factor in determining the claimant was telling the truth was that the employer could not provide any legitimate reason it had Ms. Smits in the meeting when interviewing the claimant. The employer was repeatedly questioned as to whether the investigation was completed at that point and indicated it was not. The Administrative Law Judge cannot think of any proper reason the employer would have, to hold a meeting with the claimant while having Ms. Smits in the room, when the investigation was not yet complete.

The next issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits.

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.

The claimant voluntarily quit on May 15, 2004 as a result of intolerable working conditions. She bears the burden of proving that the voluntary quit was for a good reason that would not disqualify her. Iowa Code Section 96.6-2. The law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). In order to show good cause for leaving employment based on intolerable or detrimental working conditions, an employee is required to take the reasonable step of informing the employer about the conditions the employee believes are intolerable or detrimental and that she intends to quit unless the conditions are corrected. The employer must be allowed the chance to correct those conditions before the employee takes the drastic step of quitting employment. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The claimant took the proper steps in informing four different supervisors of her complaints prior to quitting and each of these supervisors told her to document the information, which she did. No employee should be intimidated or face retaliation for reporting the inappropriate actions of a supervisor. The employer is a care facility; its employees should be treated with at least the same respect that is expected from them, when providing care for residents. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated June 8, 2004, reference 01, is affirmed. The claimant voluntarily quit her employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits, provided she is otherwise eligible.

sdb/pjs