

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA G GOMEZ GUTIERREZ
Claimant

APPEAL NO. 15A-UI-11399-S1

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOLTON & HAY INC
Employer

OC: 09/20/15
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Jessica Gomez Gutierrez (claimant) appealed a representative's October 8, 2015, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Bolton & Hay (employer). After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for November 3, 2015. The claimant participated personally. The employer participated by Lew Bolton, President, and Dan Josephsen, Sales Manager. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired on April 23, 2015, and at the end of her employment she was working as a part-time sales associate. The claimant worked in the showroom but had to go to the warehouse frequently to retrieve items customers purchased. The employer posted No Smoking signs in the warehouse but employees smoked there. The claimant worked in the showroom but went into the warehouse frequently to retrieve items customers purchased.

The claimant regularly met with the employer to discuss how she could improve as a new employee. On April 17, 2015, the claimant had such a meeting. The claimant mentioned her pregnancy and that her doctor ordered her not to be around second hand smoke. The employer did not ask the claimant about the restriction. It read the law, updated the employer's checklist, decided where it needed to put up more signs, and talked to some smokers. The claimant took pictures in the warehouse of the ashtrays with cigarette butts. On September 21, 2015, the claimant sent a picture of a doctor's note by text to the employer. She gave a copy of the note to the employer on September 22, 2015. The note had the restriction, "not to be in area where people smoke". In the five hours she worked on September 22, 2015, the employer did not talk to the claimant about her restrictions, did not tell her she did not have to go to the warehouse,

enforce its no smoking policies, or remove the ashtrays from the warehouse. The claimant took more pictures in the warehouse of ashtrays with cigarette butts. On September 23, 2015, the claimant told the employer she was quitting effective immediately.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant voluntarily quit work with good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

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). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that she intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. Hy-Vee, Inc. v. Employment Appeal Board and Diyonda L. Avant, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The claimant notified the employer of her intolerance to cigarette smoke and the employer did not take steps to enforce its no smoking policy. It did not even remove the ashtrays. The claimant subsequently quit due to those conditions. The claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's October 8, 2015, decision (reference 01) is reversed. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css