

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

SUE ELLEN BREIDENBACH  
920 GRANT COURT SE  
BONDURANT IA 50035

SMITHWAY MOTOR XPRESS INC  
PO BOX 404  
FORT DODGE IA 50501

Appeal Number: 04A-UI-12472-JTT  
OC: 10/31/04 R: 02  
Claimant: Appellant (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant, Sue Ellen Breidenbach, filed an appeal from a decision of a representative dated November 18, 2004, reference 01, which held the claimant was not eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 14, 2004. The claimant participated. The employer, Smithway Motor Xpress (Smithway), participated by Assistant Human Resources Manager Phil Daniels.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Ms. Breidenbach was employed by Smithway from May 10, 2004 as a

full-time driver manager until she voluntarily quit that employment on June 11, 2004 because she was subjected to the foul language and disrespectful behavior of a co-worker.

The offending co-worker, Andy Young, worked in the same office area as Ms. Breidenbach. Mr. Young had been assigned to train Ms. Breidenbach on use of the company computer system at the beginning of her employment. Mr. Young made liberal use of profanity, which he directed at co-workers and at least one supervisor. Mr. Young was generally opinionated and disrespectful in his communications with others in the office and in his opinion of the truck drivers the company employs. During the first two weeks of Ms. Breidenbach's employment, Terry Wiland was the ranking supervisor in the office. Mr. Wiland was aware of Mr. Young's language usage. After Ms. Breidenbach had been at the employment for two weeks, Mr. Wiland was gone for a two-week vacation. During Mr. Wiland's absence, Mr. Young's use of profanity and generally disrespectful behavior got worse. Ms. Breidenbach was not accustomed to such language or behavior, despite her twelve years as an owner-operator in the trucking business. In the context of Ms. Breidenbach's religious and moral beliefs, Mr. Young's behavior was especially offensive to her.

Ms. Breidenbach did not go to a member of management with her concerns. In making this decision not to go to management with her concerns, Ms. Breidenbach took into consideration her probationary status as a new employee and Mr. Young's relative seniority. Ms. Breidenbach also considered the fact that Mr. Wiland and another supervisor within the office were aware of Mr. Young's behavior, yet took no steps to intervene. Ms. Breidenbach did advise Mr. Young that his language offended her, but he responded with more of the same. On June 11, Ms. Breidenbach cleaned off her desk and did not return.

There were other aspects of Ms. Breidenbach's employment that caused her concern. Ms. Breidenbach was uncomfortable with the pace of the computer training she received in light of her inexperience with computers. Ms. Breidenbach was uncomfortable working in the area of the business that monitored the shipping of commodities transported by flatbed trailer. At the time Ms. Breidenbach had interviewed for a position with Smithway, she had applied for a position in the area that monitored the shipping of commodities transported in closed trailers. This was the area in which Ms. Breidenbach had experience. However, when Ms. Breidenbach reported for her first day of employment, she was assigned to the flatbed area. Ms. Breidenbach reluctantly acquiesced in that assignment.

By the time Ms. Breidenbach decided to quit her employment with Smithway, she was experiencing physical symptoms that indicated she was feeling extreme stress.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this matter is whether the evidence in the record shows that Ms. Breidenbach quit for good cause attributable to Smithway. It does not.

Unless an employee's voluntary quit is for good cause attributable to the employer, the employee is disqualified from receiving unemployment insurance benefits. See Iowa Code section 96.5-1. Since Ms. Breidenbach voluntarily quit her employment, she bears the burden of proof in this matter. See Iowa Code section 96.6-2.

Ms. Breidenbach left her employment due to intolerable or detrimental conditions created by Mr. Young's offensive language and behavior. Under Iowa law, before Ms. Breidenbach would be entitled to unemployment benefits under these circumstances, she would have to show three

things. First, she would have to show that she went to a member of Smithway management with her concerns. Second, she would have to show that she placed Smithway on notice that she intended to quit the employment unless the situation was addressed. Third, she would have to show that she provided Smithway with a reasonable opportunity to address her legitimate grievances before she quit. See 871 IAC 24.26-4; see also Suluki v. EAB, 503 N.W.2d 402 (Iowa 1993), Cobb v. EAB, 506 N.W.2d 445 (Iowa 1993), and Swanson v. EAB, 554 N.W.2d 294 (Iowa App. 1996). The work environment created by Mr. Young's behavior may very well have been intolerable. Unfortunately, Ms. Breidenbach took none of the steps she needed to take to make herself eligible for unemployment insurance benefits. At the time she left, Smithway management was unaware that she had concerns that she wanted addressed or that she intended to quit because of those concerns.

Ms. Breidenbach had additional reasons for leaving her employment. She was generally dissatisfied with the work environment. She was unable to continue to work with Mr. Young. She was unhappy with the work area to which she had been assigned. None of these additional reasons make her eligible for unemployment insurance benefits. See 871 IAC 24.25-6, 21, and 27.

#### DECISION:

The decision of the representative dated November 18, 2004, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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