

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBBIN J SEVERIN**  
Claimant

**APPEAL NO. 12A-UI-00583-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 12/11/11**  
**Claimant: Respondent (1)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 9, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 9, 2012. Claimant Robbin Severin participated. Bruce Burgess of Corporate Cost Control represented the employer and presented testimony through Pat Ohlerking and Cathy Krieger. Exhibits One, Two, Three, B and C were received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Robbin Severin was employed by Hy-Vee in Charles City as a full-time certified pharmacy tech from 2008 until December 5, 2011, when she voluntarily quit. Ms. Severin quit because she was being sexually harassed and otherwise harassed by a female coworker. The harassment occurred, at least in part, with the knowledge of the supervising pharmacists, who tolerated the harassing behavior. On November 30, Ms. Severin made a formal complaint to the supervising pharmacist, who feigned ignorance of the harassing behavior. On that same day, Ms. Severin gave a written two-week notice of her quit. Ms. Severin soon learned that the supervising pharmacist had shared with the harassing coworker some of the information Ms. Severin had provided to the supervising pharmacist. The harassing coworker then used this information to make additional harassing comments. Based on the supervising pharmacist's abuse of her trust and violation of her confidentiality, Ms. Severin decided to move up the date of her quit.

Only after Ms. Severin gave notice that she was going to quit did the supervising pharmacist take any steps to forward information to Store Director Pat Ohlerking. Mr. Ohlerking promised Ms. Severin that the matter would be investigated and addressed. Mr. Ohlerking offered to try to place Ms. Severin in another store, but that would have required Ms. Severin to commute 25-28 miles each way. Ms. Severin correctly concluded that the employer was not going to take appropriate steps to discipline and/or remove the harassing coworker.

The employer has a written harassment policy. Under the policy, the first person Ms. Severin was to notify about the harassment was her department head, the supervising pharmacist.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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).

The administrative law judge notes the conspicuous absence of testimony from members of the pharmacy department.

The evidence in the record indicates that Ms. Severin quit the employment because she was being sexually harassed, and otherwise harassed, by a female coworker. The evidence indicates that the harassing coworker's conduct was common knowledge within the pharmacy, but was tolerated by the supervising pharmacists, including the pharmacy manager. The evidence indicates that the supervising pharmacist neglected to take appropriate steps to address the harassment until Ms. Severin made a formal complaint and submitted notice of her resignation. Only then did the pharmacy manager involve the store director. Ms. Severin accurately concluded that the employer would not appropriately address the harassing conduct and elected to leave the employment rather than endure further retaliatory behavior. Ms. Severin was not obligated to accept a change in the conditions of her employment, the addition of a 25-28 mile one-way commute to continue with the employer.

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

**DECISION:**

The Agency representative's January 9, 2012, reference 01, decision is affirmed. 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