

**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**

**LACEY M BAKER
508 W BUCKEYE ST
CRESTON IA 50801**

**SOUTHERN IOWA RESOURCES
FOR FAMILIES INC
PO BOX 106
CRESTON IA 50801**

**JILL ZWAGERMAN
5501 NW 86TH ST
JOHNSTON IA 50131**

**Appeal Number: 06A-UI-00739-DT
OC: 12/18/05 R: 03
Claimant: Appellant (2)**

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 Leaving

STATEMENT OF THE CASE:

Lacey M. Baker (claimant) appealed a representative's January 12, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Southern Iowa Resources for Families, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 6, 2006. The claimant participated in the hearing and was represented by Jill Zwagerman, attorney at law. Sharon McNeill appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on February 7, 2004. She worked part time (28 – 34 hours per week) as a direct care specialist in the employer's home and community based service agency for persons with mental and physical disabilities. Her last day of work was December 19, 2005. She voluntarily quit that day.

On December 1, 2005 the claimant was assigned to begin working with a consumer on a more regular basis than she had in the past. That day the resident came up behind her, grabbed her buttocks, and told her she had a "nice a - - ." She became upset and reprimanded the consumer, and then reported the situation to her supervisor. The supervisor instructed the claimant to more strongly reprimand him and redirect him if it happened again. The next day he made statements about liking her and calling her "girlfriend." Over the next several days he made comments to her about wanting to kiss her and be her boyfriend, and at one time went to his apartment door while the claimant was inside, locked it, and made suggestive comments to her. The claimant reported each of the incidents to her supervisor, and began asking daily to be reassigned and saying that she could not work with this consumer.

On December 19 the consumer again grabbed her buttocks, this time making a very sexually direct and suggestive comment. The claimant became very upset, left the consumer's apartment and called her supervisor to report the incident. The supervisor agreed that what had happened was inappropriate, but told the claimant she needed to "deal with it." The claimant responded that she quit.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit for 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.

871 IAC 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 claimant has demonstrated that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. EAB, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). "Good cause

attributable to the employer” does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). Benefits are allowed.

DECISION:

The representative’s January 12, 2006 decision (reference 01) is reversed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

ld/s