

IOWA DEPARTMENT OF INSPECTION & APPEALS
Division of Administrative Hearings
Lucas State Office Building
Des Moines, Iowa 50319

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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DAN ANDERSON, IWD

Appeal Number: 05-IWDUI-0926
OC: 02/06/05
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)

April 22, 2005

(Decision Dated & Mailed)

96.5-1 - Voluntary Quit
871 IAC 26.24(4) – Intolerable/Detrimental Working Conditions

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated March 9, 2005, reference 01, that held she voluntarily quit without good cause attributable to the employer on February 8, 2005, and benefits were denied.

A telephone hearing was scheduled and held in on April 21, 2005, pursuant to due notice. The claimant participated. David Williams, Representative, Angela Branning, Human Resource Manager, Amy Evers, Senior Store Manager, and Linda Gast, Store Manager, participated for the employer. Alana Anderson was an observer. Claimant Exhibit A, and Employer Exhibits One through Four were admitted as evidence.

The claimant and the employer entered into a STIPULATION that all of the evidence and testimony in Appeals #05-IWDUI-0924 & 05-IWDUI-0927 would be considered as evidence in this hearing.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered all of the evidence in the record, finds that: The claimant was hired as a full-time store supervisor on December 6, 2004 to work at store #3 in Des Moines, Iowa. HR Manager Branning offered employment to claimant Kos, and she told her that she would be working a salaried "exempt" position at about 45 hours each week with some extra hours in order to get the new store open. The claimant had minimal previous retail-store experience. The claimant received some training, but not all items were reviewed on the employer's checklist; the claimant was advised that she would receive further training at the Des Moines store. The claimant was provided with a company employee handbook. The handbook provides specific time period for breaks and lunches during any 9-hour work-shift with manager approval.

Claimant Bredikis moved into the warehouse location at Des Moines store #3 in December 2004. The warehouse was not heated and it did not have any plumbing, and the claimant complained to management about the cold working conditions and lack of bathroom facilities on a periodic basis.

Claimant Anderson and other employees moved into the Des Moines store #3 on January 10, 2005. Employees soon experienced what employer witnesses described in this hearing as "chaotic conditions". The employer experienced set-up problems, product delivery problems, and the difficulty of integrating newly hired employees to their work environment. Recently hired department managers like the claimants, Anderson, Bredikis and Kos had to work with newly hired employees, and follow the direction of senior store manager Evers and store manager Gast. The employer was utilizing the experience of Evers who manages an Omaha store to help set-up the Des Moines store, and provide support for newly hired store manager Gast. One or more of the claimants questioned the employer as to who (meaning Evers or Gast) is running the store.

Claimants Anderson, Bredikis, and Kos experienced some frustration in receiving work instruction from two store managers, Evers and Gast. The claimants were required to work as many as 70-hours a week, and 15-hours a day during the first 3-weeks in the store. There were times when the claimants were not allowed to take lunches/breaks according to the employee handbook.

Anderson complained to Gast about working long hours. Gast told Anderson that if he did not work the required hours, he may suffer a pay cut. While Evers denied that any of the claimants gave notice of any intent to quit employment, she did recall the complaints about working long hours. The employer made no offer to any of the claimants to pay additional compensation for working more than 45-hours a week.

Claimant Bredikis was generally scheduled to work an 8am to 5pm work-shift, but he was required to stay most evenings until 7:30 or 8:30 pm. Bredikis complained to store manager Gast about constantly working long hours. Bredikis also complained about inconsistent employer policies in allowing Omaha store employees to leave work early during the same snowstorm that affected Des Moines, but not allowing store #3 employees to leave. In addition, store #3 had a dress code that was not a part of the employer regimen at the other stores. Bredikis attributed the inconsistent policies to the employer having two store managers (Evers and Gast) giving direction at Store #3, and not working together. Bredikis received constant negative feedback from Evers regarding job performance though Gast was his direct store manager.

Claimant Kos complained to store manager Gast about her frustration and fatigue in working long hours. Kos noted that the employer work schedule was not followed, and that she was required to

work some 12 to 15 hours a day, up to 7-days each week. Kos became overwhelmed with the extreme pressure that store management placed on her to get her work areas completed in order to get the store open. Kos perceived she was not a good fit for retail store work due to her lack of training in doing her work. The employer did not provide the additional training for Kos, as a supervisor who needed direction to instruct the employees her worked under her.

After Claimant Kos left employment on February 7, 2005, claimant Anderson was questioned by management as to whether he may have had something to do with her decision to leave. When Anderson expressed his work frustrations with Gast, she expressed thoughts about leaving employment. During the hearing, Evers commented that Gast was “feeling the burden” of a store manager, and that “she is exhausted”. Gast shared with the department managers “We’re all tired, but things will be okay”.

Claimant Bredikis last worked at store #3 on Thursday, February 3, 2005. Although the claimant had complained about working too many hours, he reported for work at 7:00 am., and was required to stay at the store until 9 pm. (though he had asked to leave earlier). After the claimant left work, he reflected on his job experience and when he perceived that his working conditions would not change, he called Gast on February 4 to announce his decision to quit employment.

Kos last worked for the employer at the grand opening of the store on Saturday, February 5, 2005. The claimant called store manager Gast before she was to report for work the next scheduled day, February 8, with her decision to quit employment. Kos communicated to Gast that she was quitting to working a lot more hours than what she had been hired to do, a condition that she perceived would not change, and that she overwhelmed in her job duties in part to a lack of training and communication with store management.

REASONING AND CONCLUSIONS OF LAW:

The issue in this appeal hearing is whether the claimant voluntarily left 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 left work voluntary without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.26(96) 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:

- 24.26(4)** The claimant left due to intolerable or detrimental working conditions.

The administrative law judge concludes that the claimant voluntarily left with good cause attributable to the employer on February 4, 2005 due to intolerable and detrimental working conditions pursuant to 871 IAC 24.26(4) and 96.5-1.

The employer's goal was to get a new store open, and it became completely insensitive to the working conditions for its store managers in the attempt to do so. The claimant-department managers were hired to work about 45 hours per week or 9-hours a day that is confirmed by the “Breaks” policy listed in the employee handbook (there is no provision beyond 9 hours). The

employer witnesses admitted that the claimant department managers were required to work as many as 70-hours a week, 15-hours a day for some three plus weeks in order to get the store up and running (January 10 to February 5, 2005).

The claimant complained about her working long hours, but the employer provided her with no relief or additional compensation. The employer rested on the fact that she was hired as a salaried, "exempt" employee that meant it could have her work such hours required. The employer made no offer of additional compensation. The claimant offered credible testimony that she expressed her concerns with the store manager about being frustrated and fatigued. The employer witnesses admitted that the work situation was "chaotic" and used words that "we're all tired", "feeling the burden", and "exhausted".

The employer contends that the department managers and supervisors should be denied unemployment benefits, because the working conditions were going to get better, and the claimants did not give sufficient notice of any intent to quit, such that the employer could correct the problems. The claimant's complained and tolerated the employer's zeal to get the store open until they could no longer endure the ongoing pressure to open and run the store. The employer knew the working conditions were intolerable, because the store manager was experiencing the same problems.

The employer made no reasonable accommodations to the claimants to address the long-hours it required them to work, and there was no reasonable assurance that the condition was being addressed in order to correct the need to quit.

DECISION:

The decision of the representative dated March 9, 2005, reference 01, is REVERSED. The claimant quit with good cause attributable to the employer on February 8, 2005. Benefits are allowed, provided the claimant is otherwise eligible.

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