

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

TERRIE M LINDSAY  
719 - 33<sup>RD</sup> ST  
FT MADISON IA 52627

CIGARETTE OUTLET INC  
C/O JOSEPH DEPAEPE  
319 E 2<sup>ND</sup> ST STE 104  
MUSCATINE IA 52761

Appeal Number: 04A-UI-11886-SWT  
OC: 10/03/04 R: 04  
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, 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 Lindsay.
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:

Lindsay, Terrie Lindsay, appealed an unemployment insurance decision dated October 25, 2004, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on November 30 and December 1, 2004. The parties were properly notified about the hearing. Lindsay participated in the hearing. Steve Thompson participated in the hearing on behalf of the employer with a witness, Debra Schnyder. Exhibits A and B were admitted into evidence at the hearing.

FINDINGS OF FACT:

Terrie Lindsay worked full time for the employer June 1, 2000, to October 4, 2004. She was promoted to the position of store manager in March 2002. Debra Schnyder, the district manager, was Lindsay's supervisor. Schnyder is Lindsay's sister. Originally, Lindsay was responsible for small store, but around November 2003, the business moved to a larger

convenience store location. After moving to that location, Lindsay found that the work involved in her job increased, which created pressure and stress for her. She also felt that Schnyder took advantage of her by pulling employees out of her store to work in other stores to cover open shifts. This was done more often with Lindsay's store than other stores, which caused the claimant to be short-staffed in 2004.

In March 2004, Lindsay saw her physician about the stress she was experiencing at work. The physician diagnosed her condition as depression and prescribed an anti-depressant for her condition. Later, Lindsay returned to her doctor and complained that she was still experiencing problems with stress and depression. She was prescribed an additional medication. Her doctor recommended that she find another job.

Schnyder assigned Lindsay with the task of training a new manager in another store in August 2004. Schnyder also assigned her to do the paperwork for another store in September 2004, when that store's manager was away from work getting married. This was on top of Lindsay's normal work.

Lindsay was upset because after getting a vacation in approximately July 2002, subsequent requests for vacations were denied because other managers had requested the same weeks off. She did get a vacation in April 2004. Later when she requested a week of vacation in October 2004, Schnyder questioned why she wanted to a vacation in October. She did this because she thought it was an unusual time to take a vacation. Lindsay interpreted the comment as an objection to her taking a vacation. Schnyder, however, granted the vacation request.

Lindsay had requested October 8, 2004, off work because their younger sister was having a caesarean section delivery that day and Lindsay wanted to be with her in the hospital. On October 2, Schnyder was talking to Lindsay about the schedule and needing an employee from Lindsay's store to work in Burlington. Lindsay reminded Schnyder about her need to be off work on October 8. Schnyder told her that she might have to work a couple of hours that afternoon. Lindsay considered Schnyder's attitude as unsympathetic and asked if she was mad. Schnyder admitted she was mad. Lindsay then told Schnyder that she was hurt by Schnyder's reaction because she had never asked for a day off before and Schnyder was getting upset about her wanting to take a day off to be with their sister when she having a baby. Schnyder told Lindsay that she was going to let the owner, Steve Thompson, handle the problem and hung up on Lindsay.

On October 3, 2004, Lindsay submitted her two-week notice that she was quitting. In her written resignation, she stated that she was quitting due to stress in the workplace and from management and that she had been put on anti-depressant medication due to the stress. She sent copies of the notice of quitting to Schnyder and Thompson. Lindsay quit employment due to the stress and depression caused by the events described in the previous paragraphs that created intolerable working conditions for the claimant.

On October 4, 2004, Schnyder had scheduled an employee from Lindsay's store to work in the Burlington store. That morning an employee in Lindsay's store called in sick. Lindsay called Schnyder and told that she needed the employee who Schnyder had scheduled to work in the Burlington store to work in her store. Schnyder responded abruptly that Lindsay needed to call Thompson. When Lindsay called Thompson, Thompson responded, "What does it matter to you, you put in your two-week notice." Lindsay replied that even though she had put in her

two-week notice, she still had this problem at work to resolve. Thompson became upset with Lindsay because he did not normally handle such situations. He told Lindsay that he had to talk to Schnyder and hung up.

As a result of the rude treatment Lindsay received from Schnyder and Thompson, she decided that she could not work out the two weeks. She found someone to cover her shift and left work. She faxed a note to the office stating that she was leaving work because of the stress from the employer and that her shift was covered. Lindsay obtained a note from her treating physician dated October 4, 2004, stating: "Patient was put on Prozac and Wellbutrin (antidepressant) due to stress from work."

#### REASONING AND CONCLUSIONS OF LAW:

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 Iowa Supreme Court in Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993), established conditions that must be met to prove a quit was with good cause when an employee quits due to intolerable working conditions. First, the employee must notify the employer of the unacceptable condition. Second, the employee must notify the employer that she intends to quit if the condition or change is not corrected.

The unemployment insurance rules also provide that a claimant is qualified to receive benefits if compelled to quit employment due to a health condition attributable to the employment. The rules require a claimant: (1) to present competent medical evidence that conditions at work made it impossible to continue in employment due to a serious health danger and (2) to inform the employer before quitting of the work-related health condition and that she intends to quit unless the problem is corrected or condition is reasonably accommodated. 871 IAC 24.26(6)b.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. Lindsay has established that she quit work due to intolerable and detrimental working conditions and that she was compelled to quit due to a health condition attributable to the employer. She had presented competent medical evidence supporting her quitting due a serious health danger. She provided the employer with notice on October 3 that she intended to quit and explained why she was quitting.

The conduct of Schnyder and Thompson on October 4, after Lindsay had submitted her notice of her intention to quit shows that nothing was going to be done to correct the situation. Thompson testified that he would have mediated the situation if he had known there were problems, yet when the clamant brought a problem to him, he became angry and hung up on Lindsay. Good cause for quitting employment attributable to the employer has been proven in this case.

DECISION:

The unemployment insurance decision dated October 25, 2004, reference 01, is reversed. Lindsay is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/tjc