

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LIZA M RUBIO**

Claimant

**APPEAL NO: 19A-UI-05184-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 06/02/19**

**Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 24, 2019, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on August 7, 2019. The claimant participated in the hearing with Attorney Nathan Vos. The employer stated it was not contesting the claimant receiving benefits and declined to participate in the hearing.

**ISSUE:**

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time safety clerk for Tyson Fresh Meats from November 6, 2018 to June 4, 2019. She voluntarily left her employment because her supervisor created a hostile work environment.

On July 15, 2018, the claimant began working in the safety department with a new supervisor. At the beginning of October 2018 the claimant asked for a raise and her supervisor told her to “go stand on a corner.” The claimant did not respond because she feared her supervisor as he told her he served in the war and has post-traumatic stress disorder (PTSD) and was “not all there” and she was afraid she would trigger his PTSD.

The claimant’s supervisor started asking her inappropriate questions and making inappropriate comments such as “what type of guys do you like?” and “what sexual positions do you like?” and “would you try new sexual positions?” The claimant did not want to cause problems because she was still a relatively new employee. Tensions increased, however, as the claimant’s supervisor was having an affair with a safety representative and she noticed the attention he paid to the claimant. The claimant, her supervisor and the safety representative had an argument in the office in November 2018 after the safety representative started complaining about the claimant and her work and telling the supervisor he should be stricter

with the claimant. The claimant told them she was going to human resources to complain and emailed Human Resources Director Will Sager and asked if she could speak to him. Mr. Sager did not respond for three weeks and before he did the claimant had a dispute with a co-worker who did not like the way she was opening a box with a pair of scissors and an argument ensued. The claimant's supervisor and the assistant manager of safety met with the claimant the following week and issued her a written warning. The claimant believed they were "ganging up on her." The safety representative transferred to another area at the end of November 2018 and the claimant initially felt more comfortable but then believed her supervisor was unfair to her because she had transportation issues and was tardy three times in December 2018 and he issued her points for her absences. He told her she was going to "fire herself" by "pointing out" but told her he was not going to terminate her employment. Her supervisor continued making inappropriate comments to the claimant such as her "butt was jiggy;" she "needed to go to the gym and do more squats;" and her "pants were tight." He also sent her pictures of a penis, a woman taking off her clothes, and nude transgender people. He told her she was going to get "fisted" and said he was going to punch her in the face. He also said, "Fuck you bitch in the a\*\*." I will be the only one to enjoy it, not you."

On February 15, 2019, the claimant asked her supervisor for a one month leave of absence to accompany her boyfriend to Cuba and he denied her request but then said he would give her the time off if she "would let him f\*\*\* her in the a\*\*." The claimant did not report the behavior because she was afraid her supervisor would retaliate by assessing her additional attendance points until he could terminate her employment. Throughout her employment her supervisor sent her pornographic videos. The claimant told him to stop sending the videos in February 2019 and he did so.

The work environment "calmed down" until the claimant made a comment to her supervisor about cheating on his wife. He became upset and refused to speak to the claimant. He then told her she no longer needed to attend the Thursday safety meetings and "forbade" her from attending other meetings. The claimant's supervisor was also frustrated because the assistant manager of the department bid to another job and she usually did the supervisor's paperwork for the safety department.

The claimant was at home May 29, 2019, and her supervisor texted her about a password and the claimant apologized. He then texted her that she had 9.00 attendance points and being tardy gave her 9:25 points. The claimant responded that he started giving her points after their altercation and he replied that he was more than fair. On May 31, 2019, the claimant asked her supervisor if he wanted to talk about the incident regarding her attendance and he screamed at her and said he was going to walk her out. The claimant said no and stated she wanted to go to human resources at which time Mr. Sager became involved. Mr. Sager met with the claimant alone and she told him about the events involving her supervisor that occurred throughout her employment since placement in the safety department and he asked her if there was more and the claimant said yes. Mr. Sager then asked her if there was sexual harassment and the claimant was uncomfortable and began to cry. Mr. Sager suggested they "try to make peace" and the claimant asked if she could transfer. Mr. Sager stated there were no other jobs for her to transfer into so she and her supervisor needed to get along. The claimant did not feel comfortable working with her supervisor any longer. She went back to the safety office and felt her supervisor and his girlfriend were talking about her which made her more uncomfortable. On June 4, 2019, she voluntarily quit her job.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment with good cause attributable to the employer.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

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).

In May 2019, the claimant notified the employer of her supervisor's inappropriate conduct towards her during the year she worked for him and the employer did not take reasonable steps to remedy the situation in a manner that was satisfactory to the claimant. The claimant subsequently quit due to those conditions. The claimant is eligible to receive unemployment insurance benefits.

## DECISION:

The June 24, 2019, reference 01, decision is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn