

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARIE A MILLS**  
Claimant

**APPEAL NO. 08A-UI-08361-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BENNETT MACHINE & FABRICATING INC**  
Employer

**OC: 07/27/08 R: 03  
Claimant: Respondent (3)**

Section 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Bennett Machine & Fabricating (employer) appealed a representative's September 11, 2008 decision (reference 02) that concluded Marie Mills (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 6, 2008. The claimant participated personally. The employer participated by Douglas Wright, Human Resources Manager, and Rick Lawrence, Tool Room Manager.

**ISSUE:**

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on November 27, 2007, as a full-time Machine Operator 1. She earned \$0.40 per hour extra for working the second shift.

The claimant's supervisor discussed his personal relationship with his wife and step-daughter with the claimant. The claimant felt uncomfortable with the subject matter and asked him to stop. He did not and the claimant complained to the employer on or about December 12, 2007. The employer immediately moved the claimant to the day shift and took away the \$0.40 per hour. The employer investigated. The supervisor said he had not talked to the claimant about his personal life but could not explain how the claimant knew personal information about him. The employer held a meeting with the claimant on or about December 13, 2007. The employer told the claimant there was no harassment and the claimant would continue to work the day shift for less money. On December 19, 2007, the claimant resigned.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work 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 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 law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). The Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. Hy-vee, Inc. v. Employment Appeal Board and Diyonda L. Avant, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The claimant notified the employer of the problem with her supervisor. The employer had the power to present testimony from the supervisor but chose not to do so. The employer did not provide firsthand testimony at the hearing regarding the harassment. In response to the complaint, the employer changed the claimant's shift and lowered her pay. The supervisor suffered no consequences. The claimant quit work due to the employer's intolerable and detrimental treatment regarding the harassment and/or the reduction of her hourly wage because she filed a complaint. The claimant is eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's September 11, 2008 decision (reference 02) is modified in favor of the respondent. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw