

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABUK AGWEK
Claimant

APPEAL NO. 09A-UI-11476-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINERIDGE FARMS LLC
Employer

**Original Claim: 07-27-08
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 7, 2009, reference 04, decision that denied benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, before Administrative Law Judge Julie Elder November 3, 2009, and continued by telephone December 8, 2009. The claimant participated in the hearing with Interpreter Robert Talang and Attorney Christopher Rottler. John Anderson, Human Resources Manager; Pedro Vazquez, Supervisor; and Thomas Cunningham, Attorney, participated in the hearing on behalf of the employer. Claimant's Exhibit A and Employer's Exhibits One through Five were admitted into evidence.

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 production worker for Pineridge Farms from January 16, 2009 to July 14, 2009. On July 13, 2009, the claimant was upset and walked off the job at the first break. On July 14, 2009, she arrived at 10:45 a.m. and went to the human resources office. She stated she was having problems at work, she was going to work somewhere else, and she was voluntary quitting. The claimant gave Human Resources Manager John Anderson a letter written on her behalf by her daughter (Claimant's Exhibit A). The letter indicated "the supervisor" was calling her names and saying such things as "Fuck you and Fuck Mother African," said she was a "monkey for Michael Jackson," and that her "face looked like Obama" (Claimant's Exhibit A). She stated that on March 13, 2009, Supervisor Pedro Vasquez hit her with his elbow and she almost fell when she went to wash her hands and that when she asked him why he pushed her he said, "You motherfucking African." She told her daughter about the incident but it was not contained in her letter because her daughter forgot to include it. Her letter indicated that her machine was broken July 13, 2009, and when the supervisor came to help her he gave her the finger and started shaking it at her and "the other Mexican ladies start (sic) laughing at me" (Claimant's Exhibit A). The claimant became upset and went home and the

supervisor said, "Fuck you and go home" (Claimant's Exhibit A). The claimant testified that this type of behavior occurred on numerous occasions.

On July 7, 2009, the claimant was sent home while the employer investigated an incident where the claimant told another African employee in the lunch room that the Hispanic employees were saying "Fuck you" about Africans. Mr. Anderson asked the other African employee if she heard it herself and she said she had not but the claimant told her about it. The other African employee then began making comments about the Hispanic employees, called one a bitch and spit in her face. At the conclusion of the meeting with the claimant about the incident, the employer sent her home, along with some other employees, in an effort to diffuse the situation, rather than as a disciplinary action, and told her to report to Human Resources the following day. The claimant returned the next day and Mr. Anderson apologized to her and said he needed to properly investigate the incident and the claimant stated she understood and went back to work.

On July 10, 2009, the claimant went to the Human Resources office at 10:15 a.m. She was upset and crying and when Mr. Anderson asked her what happened the claimant said, "Jimmy said I look like a dog" and if she went home she could not make any money. "Jimmy" was a co-worker in the claimant's department. She also said "Poncho" said the "f-word" and something about going home. Mr. Anderson asked the claimant if she would go to her supervisor's office with him to discuss the situations and she agreed. They met with Supervisors Pedro Vasquez and Leonard O'Hillsky and Mr. Vasquez suggested they bring the accused employees into the office one at a time and the claimant agreed. Poncho came in and the employer explained the claimant's complaint and let him respond and he said the claimant was a "very nice lady" and he had not said anything bad but if the employer thought he did, he would voluntarily quit that day. The employer asked the claimant if Poncho did or said anything else and she said no. When Jimmy was called into the office and told of the claimant's allegation that he called her a dog he looked very surprised and explained he thought the claimant might have misunderstood his joking comment to co-workers at the end of the line that the employer was "working us like a dog" because they were working a ten-hour shift that day. The employer asked Jimmy if he spoke directly to the claimant and he said no. The employer asked the claimant if it was possible she misunderstood Jimmy's comment and she did not answer and was sent back to work. The claimant stated she went to Mr. Anderson between four and nine times to complain about her treatment. Mr. Anderson, however, testified that he was not aware of any of the incidents she discussed in her letter until she gave him the letter July 14, 2009. He asked her why he had not heard about the problems prior to that day, especially when she talked to him July 9 and 10, 2009, and the claimant did not respond specifically but just said she was voluntarily quitting. The employer conducted an investigation into the claimant's allegations even though she had quit. Mr. Anderson met with Supervisor Mr. O'Hillsky, who worked in the claimant's department, and Supervisor Mr. Vasquez. Both expressed shock at the claimant's statements and denied making any of those remarks or hearing them, as did co-workers Gary Seals, who happens to be an African American, and Ramone Perez. The employer could not substantiate any of the claimant's allegations.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without 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.

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. While the allegations made in the claimant's letter were vile and disgusting racial slurs and should never be tolerated, Mr. Vasquez testified he never made any of those remarks and Mr. Anderson could not find anyone to substantiate her complaints. The claimant had ample opportunity to go to Mr. Anderson when these events occurred but did not do so, nor did she tell him when she talked to him July 9 and July 10, 2009. Her complaints of July 10, 2009, for example, appear to be clear misunderstandings, with Jimmy saying the employer was "working them like dogs," not referring to the claimant as a dog, and both he and Poncho's reactions to being told what the claimant believed they said were shock and disbelief. The employer's workforce speaks nine different languages with approximately 60 percent of its supervisors being non-white. They have seven or eight Sudanese or Arabic employees working in the claimant's department. None of those employees have complained about anything the supervisors or co-workers have said or done. The employee takes their diversity and anti-discriminatory policy very seriously, and that appears to be corroborated by the fact Mr. Anderson continued the investigation into the claimant's allegations even after she left. Mr. Anderson's testimony that the claimant did not come to him with the complaints stated in her letter was credible. Consequently, the administrative law judge must conclude that the claimant has not met her burden of proving unlawful, detrimental, or intolerable working conditions as defined by Iowa law. Therefore, benefits must be denied.

DECISION:

The August 7, 2009, reference 04, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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