

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAWN WAYBILL**

Claimant

**APPEAL NO: 15A-UI-07062-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BUSHMAN EXCAVATING INC**

Employer

**OC: 05/24/15**

**Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 12, 2015, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on July 20, 2015. The claimant participated in the hearing. Julie Bushman, President, participated in the hearing and the employer was represented by Attorneys Alex Anderson and Amy Reasner. Employer's Exhibits A through M 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 administrative assistant/transportation manager for Bushman Excavating from February 2, 2015 to May 26, 2015. She voluntarily resigned her position due to several incidents of sexual harassment on the job.

During the second week of the claimant's employment in February 2015 she was introduced to independent contractor Timmy Stoddard. He came into the office and said, "Wow. Do you have a building permit for those things?" The claimant asked him what he was talking about and he stated, "Your boobs are huge." The claimant was shocked and laughed nervously. Controller/Human Resources Manager, Laurel Gonzalez was in the office and witnessed the incident. She told Mr. Stoddard "not to talk that way," and it was "completely inappropriate" and directed him to apologize to the claimant. A few minutes later Mr. Stoddard approached the claimant and apologized but did so with a smile and she felt it was "insincere."

The third week of the claimant's employment Mr. Stoddard came into the office and the claimant's back was to him. He dug through the candy on the desk and then said the claimant's name which caused her to turn to look at him. He then proceeded to lick a candy bar "inappropriately" until the claimant said, "Knock it off. You should be ashamed of your

behavior.” Ms. Gonzalez was in the office but Mr. Stoddard had his back to her and she could not see what he was doing.

A short time later Owner, Dan Bushman was in his shared office when employee Kurt Geist came in and went in the office. Mr. Bushman called the claimant into the office and asked her to bring some paperwork to him. The claimant took the documents in to him and as she entered the office Mr. Geist stopped talking. Mr. Bushman said, “Kurt, quit looking at Dawn’s sparkly ass.” The claimant turned around, saw Mr. Geist’s face was red and that he had his hands up. He said, “I wasn’t looking at her ass.” Mr. Bushman laughed and the claimant said, “Stop it. Leave me out of this conversation,” and walked out of the office.

In March 2015 Ms. Gonzalez was on vacation for two weeks and while she was gone Mr. Stoddard and two other independent contractors came into the office on a Thursday and asked for their paychecks. The claimant called Mr. Bushman to ask if she could give them their checks early and he said that was fine. After one of the other two men left, Mr. Stoddard was sitting in Ms. Gonzalez’ chair, talking about what it would feel like to have the power that came with Ms. Gonzalez’ chair and position. The remaining independent contractor asked the claimant to copy something for him and went into the shop. Mr. Stoddard got up and walked over to the claimant and said, “Dan Bushman is right. You do have a nice sparkly ass” and then slapped her across her butt. The claimant “froze” and Mr. Stoddard went into the shop. When the claimant went home she called Mr. Bushman and told him what happened with regard to Mr. Stoddard. Mr. Bushman was silent before stating, “I will handle it.” The claimant asked him if she needed to call Ms. Gonzalez or President Julie Bushman and he said, “No. They will blow this issue out of control. I will handle Timmy. You need to understand Timmy isn’t all there.” The claimant asked him to let her know what happened after he talked to Mr. Stoddard and Mr. Bushman said he would but never did so. On March 13, 2015, Mr. Stoddard “stormed” into the office, glaring at the claimant, and went into the office telling Mr. Bushman he needed to talk to him. He came back into the claimant’s area of the office and another employee came into the office looking for his paycheck. When the claimant turned around to get the checks, they were gone and she noticed Mr. Stoddard was holding them. The claimant said, “Timmy, can I please have them after you are done?” and Mr. Stoddard snapped, “Don’t call me Timmy. Only my mom calls me “Timmy.” The claimant had been introduced to Mr. Stoddard as “Timmy.” He then walked to the door and said, “Bitch” and slammed the door. Ms. Bushman was in the shop but Ms. Gonzalez witnessed the incident. The following week Ms. Bushman came into the office and told the claimant they needed to talk. She then asked the claimant if there was an incident the previous Friday. The claimant told Ms. Bushman what happened but did not feel comfortable talking to Ms. Bushman because Mr. Stoddard had repeated Mr. Bushman’s comment to Mr. Geist that she had a “nice sparkly ass.” She did not feel like Ms. Bushman was “very open” to her concerns and Ms. Bushman stated sometimes Mr. Stoddard does not understand. Ms. Bushman then relayed a situation she had with Mr. Stoddard where he punched her in the arm and she told him to “get the fuck out.” Later that night Mr. Bushman called the claimant and told her Mr. Stoddard said she was stalking him. Mr. Bushman then laughed and said he knew it was not true.

On March 17, 2015, the claimant and Mr. Bushman went to Truck Country in Cedar Rapids to pick up a truck he had just purchased. Mr. Bushman dropped the claimant off with a check for the salesman, Ryan Bastion, and instructed her to get the title and drive the truck back to the shop. The claimant knew Mr. Bastion from previous employment. Later that day Mr. Bushman called the claimant and directed her to bring him some items he needed to take to a job site in Ames, Iowa. At 4:00 p.m. the claimant went to Reed Machinery to drop off the requested items and found Mr. Bushman behind the building chaining down the excavator. The claimant put the items in his truck and asked if he needed anything else. Mr. Bushman said he and Mr. Bastion

had been texting back and forth throughout the day and the main topic of conversation was the claimant's breasts and whether they were "real or fake." Mr. Bushman stated Mr. Bastion said her breasts were fake and Mr. Bushman said "prove it. Do you have pictures or have you seen them." Mr. Bushman showed the claimant some of the text messages but blocked others with his fingers so the claimant could not see them. The claimant was very uncomfortable and did not know what to say to Mr. Bushman or what to do because Mr. Bushman was her boss.

In late March 2015, the claimant asked Ms. Gonzalez to talk to Mr. Stoddard and tell him to only come into the office if someone else was present. Ms. Gonzalez spoke to Mr. Stoddard and after that time Mr. Stoddard was "openly hostile" toward the claimant and made comments under his breath.

On April 14, 2015, new employee Will Forrester was waiting in the office for the claimant when she arrived. He invited the claimant to go to a car show with him and the claimant declined and stated it would not be appropriate for her to date someone she worked with. Mr. Forrester said it was not a date as several of his friends would be there but the claimant said no thanks and that she had a boyfriend. Mr. Forrester stated he could come too but the claimant said no. At that point Ms. Gonzalez interrupted and asked Mr. Forrester where he was supposed to be and he left. On April 15, 2015, Mr. Forrester came back into the office and asked Ms. Gonzalez where he was supposed to be. She told him and then instructed him to go out to the shop and stay out of the office. On April 16, 2015, Mr. Forrester came into the office again and told the claimant she should have gone to the car show because he had a great time. The claimant stated she was glad he had a good time and returned to work.

On March 22, 2015, Mr. Bushman called the claimant and asked if she wanted to take a load to Owatonna, Minnesota, over the weekend and the claimant said yes. She rearranged her schedule before Mr. Bushman called her back at 6:30 p.m. that evening and said he was giving the load to someone else who had been in court all week and did not have any hours. He repeatedly said that it was "not because she was a woman." The claimant checked the male employee's hours for the week and it appeared he had worked all week.

On March 23, 2015, the claimant had her 90 day review and the employer gave her a \$2.50 per hour raise (Employer's Exhibit B). The claimant was responsible for payroll and added the raise to her next paycheck. One week later the employer told her the raise was not to go into effect until May 2, 2015, and the raise in her paycheck would be deducted out of her next check and the claimant was upset by the employer's decision. Ms. Bushman laid the claimant's next check on her desk and the claimant did not respond. Ms. Bushman then stood behind the claimant and put her hands on the claimant's shoulders and asked what was wrong and why she was not talking. The claimant stated nothing was wrong but that she was working. She testified she felt intimidated and that Ms. Bushman was invading her "space."

In May 2015, the claimant was asked to meet with Ms. Bushman about the transportation and trucking handbook. The claimant said she did not think the employer needed the safety rules written into the trucking handbook because the safety rules were written by the Department of Transportation (DOT) and it would "piss off the truckers." The claimant provided a copy of a handbook and Ms. Bushman asked her where she got it. The claimant explained she took it from CRST when she worked there previously. Ms. Bushman stated her attorney said they need the handbook and said, "We need to do this and you are being defiant. We need to get this done."

On May 13, 2015, the claimant went to the shop to ask a question about a piece of equipment. She was standing near the piece of equipment and employee, Tim Grath, was standing there while Gary Bushman, Mr. Bushman's father, was standing next to the claimant. Mr. Geist walked up behind the claimant and extended a greasy tape measurer into the claimant's hair and started scratching her head. Mr. Geist said he had an itch and the claimant told him to go over to the corner and scratch himself. She told him not to stand next to her or touch her again. She then went back into the office and told Ms. Gonzalez what happened.

On May 14, 2015, the claimant went to the shop to ask someone a question and Mr. Geist came up behind her and patted her on the back throughout the conversation. The claimant again told Ms. Gonzalez and she stated she would talk to him the next day.

On May 15, 2015, the claimant told Ms. Gonzalez about the situation involving Mr. Bushman and Mr. Bastion and the text messages from March 2015. Ms. Gonzalez also talked to Mr. Geist about his actions toward the claimant the previous day and when she saw him a few hours later he avoided the claimant so she knew Ms. Gonzalez talked to him. That afternoon Mr. Stoddard came in to get his check and Mr. Bushman carried on a conversation with him knowing Mr. Stoddard's presence made the claimant uncomfortable. At 4:15 p.m. the employer terminated Ms. Gonzalez employment. The claimant was upset because she felt Ms. Gonzalez was the only person who could help her deal with the sexual harassment. Mr. Bushman called the claimant that night and told her Ms. Gonzalez' termination did not affect her and her job was going well. He then said some time they would go out for a beer and would laugh about the situation and Ms. Gonzalez.

The employer hired a new Controller/Human Resources Manager, Joe Clarahan, to replace Ms. Gonzalez and he started May 18, 2015. On May 20, 2015, the claimant was at the printer and felt Mr. Clarahan blocked her from walking away from the printer. The claimant said "excuse me" and walked around him. Later that day the claimant needed to speak to the third occupant of Mr. Bushman's office, Thomas Poole, and as the claimant walked past Mr. Clarahan he stepped back and shoved her in the back as she walked by. That same day, Mr. Bushman made comments to the claimant about a camper in the back of the building being a "love shack."

On May 26, 2015, the claimant went in and left a letter of resignation on her desk. She also left her key and two work shirts. Her resignation letter stated, "I am resigning effectively immediately for the follow reasons. I have been experiencing on-going sexual harassment, which I informed Dan and you was going on, and the lack of concerns for this issue has created a hostile environment and I do not see any resolution to this problem" (Employer's Exhibit F). Ms. Bushman was surprised at the claimant's stated reason for her resignation as she felt she had addressed the claimant's concerns when they were brought to her attention.

The employer's handbook contains a section entitled "Unlawful Harassment/Discrimination" (Employer's Exhibit L). The employer provided affidavits from Mr. Bushman, Mr. Geist, Mr. Forrester and Mr. Clarahan denying the claimant's allegations of sexual harassment (Employer's Exhibits D, H, I and J). It also furnished a written, undated, statement from Project Manager Thomas Poole stating he participated in a conversation with the claimant and Ms. Gonzalez where Ms. Gonzalez was discussing the possibility of losing her job and the claimant stated if Ms. Gonzalez was fired the claimant would leave too (Employer's Exhibit K).

## 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:

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 dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). 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.

The employer's handbook states the employer is "committed to providing a work environment that is free of harassment" and harassment includes "verbal conduct such as epithets, derogatory comments, slurs, or unwanted sexual advances, invitations, or comments" (Employer's Exhibit M). The handbook indicates the policy applies to "co-workers, other employees, including supervisors, and persons doing business with or for the company" (Employer's Exhibit M). It directs employees who believe they are the recipient of harassment to report it immediately to the Human Resources Manager (Employer's Exhibit M). When an employee reports harassment, the employer's responsibilities include informing the employee of the steps to be taken to "report and redress the harassment pursuant to the company's internal complaint procedure," and to "immediately conduct a thorough, objective and complete investigation of the alleged harassment and make a determination about whether the unlawful harassment has occurred; take prompt and effective remedial action commensurate with the severity of the offense of harassment " and "advise the employee of actions taken to address the complaint" (Employer's Exhibit M).

The claimant was clearly sexually harassed, primarily by Mr. Stoddard and Mr. Bushman, among others. Mr. Stoddard sexually harassed the claimant several times beginning the second week of her employment when he made inappropriate comments about her breasts, and continued with him suggestively licking the candy bar, and repeating Mr. Bushman's comment about the claimant having a "nice, sparkly ass" before slapping her on the butt and calling her a "bitch." The claimant did complain to Mr. Bushman but both he and Ms. Bushman made excuses for Mr. Stoddard's behavior and Mr. Bushman instructed the claimant not to tell Ms. Bushman or Ms. Gonzalez of certain incidents because they would blow the situation out of proportion. Instead, he said would "handle it." After the employer talked to Mr. Stoddard about his behavior, Mr. Stoddard called the claimant a "bitch" and slammed the door. Mr. Bushman never notified the claimant of what action he took against Mr. Stoddard regarding his conduct toward the claimant. Less than one week later Mr. Bushman had the inappropriate conversation with the claimant about his text message exchange with Mr. Bastion regarding the claimant's breasts.

The claimant reported most of the situations to Ms. Gonzalez who was the Human Resources, Manager and Ms. Gonzalez did take steps to stop the harassment but it continued regardless of her efforts. Ms. Bushman intervened on at least one occasion but the claimant was understandably reluctant to go to her about the situation as her husband was directly involved in at least two incidents when he stated the claimant had a “nice, sparkly ass” in front of Mr. Geist and the comment was later repeated by Mr. Stoddard and when Mr. Bushman told the claimant about his text conversations with Mr. Bastion about the claimant’s breasts. When Ms. Bushman talked to the claimant about the situation she too defended Mr. Stoddard as not understanding how his actions could impact another, stating, effectively, he just “didn’t get it.” While the employer contends it did not have control over Mr. Bastion, its policy states it covers supervisors, employees and anyone “doing business with or for the company.”

The incidents continued throughout the claimant’s employment, including the May 13, 2015, situation with Mr. Geist standing too close to the claimant in the shop and extending a greasy tape measurer into her hair and saying he “had an itch.” The following day Mr. Geist repeatedly patted the claimant on the back when in the shop. She reported the situations to Ms. Gonzalez who stated she would talk to him. On May 15, 2015, Ms. Gonzalez, the only person the claimant felt offered her any protection from the men at work who were harassing her, was discharged.

The claimant did have an exchange with Ms. Bushman about the trucking handbook the first week in May 2015. She was dragging her feet with regard to helping Ms. Bushman with the handbook and whether she believed the handbook was necessary or not, that decision was up to the employer, not the claimant.

The claimant also instituted her raise early. That may have been a simple mistake on her part, but even if intentional, the employer is not alleging the claimant was discharged for misconduct. While the employer could have made the effective date of the claimant’s raise clearer and verbally told her the effective date, it did recoup the additional money out of her next check, which upset the claimant. The claimant was wrong in entering her raise early and it was not unreasonable for the employer to ask her to return the raise she entered prior to the effective date.

When Ms. Gonzalez’ employment was terminated May 15, 2015, the claimant was extremely upset by that situation because she looked at Ms. Gonzalez, the Human Resources Manager, as a protector from the repeated pattern of harassment she was experiencing from some of the men either working for or running the company. Mr. Poole’s statement that the claimant told Ms. Gonzalez she would leave too if Ms. Gonzalez was discharged is probably accurate. Her comment, however, is understandable under the circumstances. She worked closely with Ms. Gonzalez and shared an office with her. Ms. Gonzalez witnessed some of the sexual harassment experienced by the claimant and intervened on her behalf. It was not unreasonable for the claimant to express she would leave the employer as well, partly out of loyalty to Ms. Gonzalez and partly out of fear of losing the main person who intervened on her behalf, if the employer terminated Ms. Gonzalez as they were anticipating. The claimant performed her job satisfactorily and Mr. Bushman told her she was “doing a good job” when he called her after work May 15, 2015, following Ms. Gonzalez’ termination.

The evidence does not establish that the claimant was sexually harassed by Mr. Forrester or Mr. Clarahen. Both of those situations can be explained as behavior other than sexual harassment. Mr. Forrester was aware the claimant had an interest in classic cars and asked if she wanted to attend a car show with him and his friends. When she declined and stated she had a boyfriend, Mr. Forrester invited him to attend too. Mr. Clarahen's behavior can just as easily be attributed to two co-workers meeting in a hallway and both moving in the same direction to try to avoid each other. The fact that Mr. Clarahen assumed a football lineman stance does not make the situation sexual harassment.

The claimant has established that she was sexually harassed by Ms. Stoddard, Mr. Bushman, Mr. Bastion and Mr. Geist. The employer did not follow its own policies regarding sexual harassment and did not take swift and decisive action to end the harassment. While the claimant did not report each incident to Ms. Bushman, that is understandable as Ms. Bushman's husband was one of the main offenders and after she made excuses for Mr. Stoddard, the claimant was reluctant to seek her help. The claimant did report most of the incidents to Ms. Gonzalez and she usually took swift action in an attempt to stop the harassment but she was also placed in the uncomfortable position of Mr. Bushman being one of her bosses.

Under these circumstances, the administrative law judge concludes the claimant has met her burden of proving her leaving was due to potentially unlawful sexual harassment on the part of the claimant's supervisors and co-workers, and an intolerable and detrimental working environment. Therefore, benefits are allowed.

**DECISION:**

The June 12, 2015, reference 01, decision is affirmed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/mak