

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBIN L MARSHALL
Claimant

APPEAL NO. 14A-UI-03159-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ORCHESTRATE MANAGEMENT
ASSOCIATES
ORCHESTRATE**
Employer

**OC: 02/23/14
Claimant: Appellant (1)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated March 17, 2014, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on April 15, 2014. The claimant participated. The employer participated by Ms. Rachel Ricketts, Payroll Specialist.

ISSUE:

At issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Ms. Robin Marshall was employed by Orchestrate Management Associates from July 16, 2011 until February 23, 2014 when she left employment without advance notice. Ms. Marshall was employed as a full-time catering sous chef and was paid by salary. Her immediate supervisor was Chef Bill Overnight.

Ms. Marshall left her employment with the captioned employer on February 23, 2014 after two male kitchen cooks were unhelpful and made disparaging remarks to the claimant. Ms. Marshall was in the process of cleaning out a refrigerator that was malfunctioning and the other cooks, who were under her supervision, were unwilling to assist the claimant in preparing food orders and made negative statements about the claimant's abilities.

Ms. Marshall had complained about the other cooks to Mr. Overnight and to other sous chefs in the cooking area. However, those individuals had not taken any action to assist Ms. Marshall. The claimant had been told that she did not have the authority to write up the two kitchen cooks and believed that no help would be forthcoming from any of the management individuals in the kitchen area.

Although the company handbook informs employees of the right to go up the chain of command and to bring any areas of concern or dissatisfaction to upper management, if their supervisors are not responsive, the claimant did not do so. The company handbook encourages employees to go to the company's director or operations, the director of human resources or to a payroll specialist within the human resource department if they are experiencing problems with their immediate supervisors. Ms. Marshall received a copy of the company handbook and acknowledged the receipt of the handbook.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant voluntarily left 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.

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). An individual who voluntarily leaves their employment must first give notice to the employer of the reason for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). Claimants are not required to give notice of intention to quit due to intolerable, detrimental or unsafe working environments if the employer had or should have had reasonable knowledge of the condition. Hy-Vee v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005).

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 Board, 494 N.W.2d 660 (Iowa 1993).

In the case at hand the evidence in the record establishes that Ms. Marshall left her employment because she had ongoing issues with two cooks who were under her supervision but were acting inappropriately and repeatedly making disparaging remarks to or about the claimant.

Ms. Marshall had complained to other sous cooks in the kitchen area and to the chief sous cook about the matter but found that her complaints were not being taken seriously. Although the claimant knew, or should have known based upon the information in the company's handbook that she could go up the chain of command to bring the matters to the direct attention of upper management, Ms. Marshall did not do so. The administrative law judge concludes that while the conduct of the other kitchen cooks was aggravating and unacceptable, the evidence does not establish that the work environment was hostile or intolerable. The evidence in the record also does not establish that Ms. Marshall had previously threatened to quit employment if the issues with the kitchen cooks were not resolved.

For the above-stated reasons the administrative law judge concludes that the claimant has not sustained her burden her proof in establishing that she left employment with good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated March 17, 2014, reference 01, is affirmed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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