

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYRONZA L BASKERVILLE
Claimant

APPEAL NO. 08A-UI-08057-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WOOLVERTON PRINTING CO
Employer

**OC: 08/10/08 R: 03
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Tyronza L. Baskerville filed a timely appeal from an unemployment insurance decision dated September 8, 2008, reference 01, that disqualified her for benefits. After due notice was issued, a hearing was commenced on September 24, 2008 with Ms. Baskerville participating and being represented by Luke Guthrie, Attorney at Law. Mark Fransdal, Attorney at Law, appeared on behalf of the employer, Woolverton Printing Company. Cindy Weber, Chris Squires and John Lynch all testified for the employer. Claimant Exhibits One through Five and Employer Exhibits One through Eight were admitted into evidence. With the consent of the parties, the hearing was concluded on September 29, 2008.

ISSUE:

Did the claimant leave work with good cause attributable to the employer?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Tyronza L. Baskerville was employed by Woolverton Printing Company from December 8, 2006 until she resigned effective May 19, 2008. During the course of her employment, Ms. Baskerville was the only African-American employee of the company, which numbered approximately 50 employees. Shortly after Ms. Baskerville was hired, a co-worker made a comment to the effect that African-Americans don't stay on a job for long. Ms. Baskerville did not like the statement but let it pass since she was a new worker.

Sometime later another co-worker referred to Brazil nuts using a slang term that utilized an offensive racial reference. Once again, Ms. Baskerville let the comment pass. Nevertheless, the comments made her feel uncomfortable. She stopped eating in the company lunchroom.

She first mentioned the events after someone had left a note on her car in the company parking lot, "Nice park job. Better job next time." Ms. Baskerville always parked in the same spot in the parking lot. She reported the note and the prior incidents to her supervisor, Chris Squires.

In early 2008 the company purchased a new ink jetter machine. It needed some impromptu adjustments or repairs. A co-worker made the repairs while referring to the process with a slang term that contained a racially offensive term.

On or about April 22, 2008, Ms. Baskerville told President John Lynch of what had happened. The company has a written anti-harassment policy. The policy imposes an obligation on the employer to investigate and to report back to the person making the complaint. Instead of doing so, Mr. Lynch asked Ms. Baskerville what she wanted him to do.

On May 13, 2008, Ms. Baskerville complained to her supervisor about the job duties assigned to her. The supervisor left the premises in tears. Later, Mr. Lynch spoke to both Ms. Baskerville and to the supervisor about the incident. There was no specific allegation of harassment, but Ms. Baskerville accused the supervisor of showing favoritism to her niece, a co-worker of Ms. Baskerville.

On May 19, 2008, Ms. Baskerville gave two weeks' notice of her intent to resign. She told the supervisor that she intended to return to school. She did not speak to Mr. Lynch at that time. The company paid Ms. Baskerville for the following two weeks but did not require her to return to work.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant left work with good cause attributable to the employer. For the reasons which follow, the administrative law judge concludes that it does.

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 proof. See Iowa Code section 96.6-2. An individual may receive unemployment insurance benefits following a resignation if the resignation was for intolerable or detrimental working conditions. See 871 IAC 24.26(4). An employee need not give any specific notice to an employer before resigning under such circumstances. See Hy-Vee v. Employment Appeal Board, 710 N.W. 2d 1 (Iowa 2005).

The evidence in this record establishes several instances in which Ms. Baskerville, an African-American, was subjected to derogatory racial comments. The evidence establishes the existence of an anti-harassment policy that puts certain affirmative obligations on the employer when the employer is made aware of a situation constituting harassment. The administrative law judge concludes from the evidence in the record that the employer failed to follow its own policy. The administrative law judge finds that the combination of derogatory racial comments and management inaction created intolerable and detrimental working conditions justifying the claimant's resignation. Benefits are allowed.

DECISION:

The unemployment insurance decision dated September 8, 2008, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs