

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA J BARBUZZA
Claimant

APPEAL NO. 16A-UI-05726-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

YELLOWBOOK INC
Employer

OC: 04/24/16
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Maria Barbuzza filed a timely appeal from the May 11, 2016, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Barbuzza voluntarily quit on April 18, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on June 7, 2016. Ms. Barbuzza participated. Maria Gaffney represented the employer. Exhibits B, C and D were received into evidence.

ISSUE:

Whether Ms. Barbuzza's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Maria Barbuzza was employed by Yellowbook, Inc., d/b/a Hibu, as a full-time telephone client services consultant from June 2014 until April 18, 2016, when she voluntarily quit the employment. Ms. Barbuzza's immediate supervisor was Noah Konzon, Inside Sales Manager. Ms. Barbuzza worked alongside other telephone client services consultants including Amm Nelson, Heather Rudnicki and Lara Marshall.

In March 2016, Ms. Barbuzza spoke to Ms. Rudnicki in the workplace about her desire to begin dating and mentioned that she had established an account with an on-line dating service. Ms. Barbuzza and Ms. Rudnicki were friends. Mr. Nelson joined the conversation and suggested that Ms. Barbuzza date him instead of utilizing the on-line dating service. Ms. Barbuzza told Mr. Nelson that it would not be appropriate to date someone she worked with. Mr. Nelson disagreed with Ms. Barbuzza's position on the subject. Following that conversation, Mr. Nelson summoned Ms. Barbuzza to his desk. Mr. Nelson told Ms. Barbuzza that she did not have to mess around with the guys on the online dating service and could instead "hang around" with him and be "friends with benefits." Ms. Barbuzza declined the offer. After that, Mr. Nelson sent several instant messages to Ms. Barbuzza's work computer suggesting that they "hang out" after work and asking what her plans were. Ms. Barbuzza reasonably understood the messages to be part of Mr. Nelson's ongoing and unwelcome sexual

advances. Mr. Nelson sent the first message during the first half of March 2016 and sent the last message at the end of March 2016.

In the meantime, Mr. Nelson also directed his sexual advances toward Ms. Rudnicki. Ms. Rudnicki entered into a sexual relationship with Mr. Nelson and spoke to Ms. Barbuzza about the relationship. Ms. Barbuzza attempted to dissuade Ms. Rudnicki from entering into the relationship with Mr. Nelson and later attempted to persuade her to end the relationship. Mr. Nelson learned of the counsel Ms. Barbuzza had provided to Ms. Rudnicki.

On Friday, April 8, 2016, Mr. Konzon was out of the office and Mr. Nelson was left in charge of the telephone client services consultants. During that shift Mr. Nelson counseled Ms. Barbuzza for not being on the phone. Ms. Barbuzza perceived Mr. Nelson to be singling her out for criticism.

On Sunday, April 10, Ms. Barbuzza learned that Mr. Nelson had referred to Ms. Barbuzza as a "jealous bitch," and had asserted that she wished she was Ms. Rudnicki, and had asserted that Ms. Barbuzza "was trying to interfere with [him] getting his dick wet."

On April 11, Ms. Barbuzza made contact with her immediate supervisor, Noah Konzon, outlined Mr. Nelson's conduct from the time he initially propositioned Ms. Barbuzza, and told Mr. Konzon that Mr. Nelson's conduct was causing her increased anxiety in the workplace. Mr. Konzon told Ms. Barbuzza that he could make certain that Mr. Nelson made no further comments regarding her. Mr. Konzon told Ms. Barbuzza, "Let it roll off your back." Mr. Konzon told Ms. Barbuzza that she did not need to take the matter to human resources. Under the employer's sexual harassment policy, Ms. Barbuzza was supposed to report sexual harassment concerns to her supervisor and Mr. Konzon was supposed to notify the human resources department of the allegation.

On April 18, 2016, Ms. Barbuzza learned at a staff meeting that Mr. Nelson had been promoted to Assistant Inside Sales Manager. That meant that Mr. Nelson would thereafter function as one of Ms. Barbuzza's immediate supervisors. Mr. Barbuzza believed at that point that Mr. Konzon had intentionally undermined her attempt to prompt the employer to respond to Mr. Nelson's sexually harassing behavior and that he had done so to facilitate Mr. Nelson's promotion to Assistant Manager. Ms. Barbuzza submitted her quit notice the same day and made her quit effective immediately.

REASONING AND CONCLUSIONS OF LAW:

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 requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

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 Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

The evidence in the record establishes intolerable and detrimental working conditions that would have prompted a reasonable person in Ms. Barbuzza's situation to quit the employment. Ms. Barbuzza testified with candor, conviction and specificity regarding the sexually harassing behavior to which she was subjected in the workplace and regarding her attempt to seek a remedy. The administrative law judge found Ms. Barbuzza's testimony credible. The evidence establishes that Mr. Nelson had indeed engaged in a pattern of sexually harassing behavior directed at Ms. Barbuzza from the middle of March to the middle of April 2016. Despite Ms. Barbuzza's immediate rebuff to his sexual overtures, Mr. Nelson continued with unwelcome advances. When Ms. Barbuzza attempted to counsel her friend, Ms. Rudnicki, to discontinue her relationship with Mr. Nelson, Mr. Nelson responded with additional sexually harassing behavior directed at Ms. Barbuzza. When Ms. Barbuzza took reasonable steps to bring the conduct to the attention of her immediate supervisor, Mr. Konzon, he violated the employer's sexual harassment policy by talking Ms. Barbuzza out of bringing the matter to the attention of the human resources staff and by failing to report the matter to human resources. A reasonable person in Ms. Barbuzza's situation would indeed be alarmed to learn that the person who has been sexually harassing them in the workplace and outside the workplace has been promoted to be her immediate supervisor. A reasonable person in Ms. Barbuzza's situation would indeed be inclined to conclude that Mr. Konzon had intentionally undermined Ms. Barbuzza attempt to seek remedy for the sexual harassment.

Ms. Barbuzza voluntarily quit the employment for good cause attributable to the employer. Accordingly, she is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The May 11, 2016, reference 01, decision is reversed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs