

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

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Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Gwen M. Donahe (claimant) appealed a representative's May 21, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of The Trucker's Choice, Inc. (employer) would not be charged because the claimant had voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 21, 2004. The claimant participated in the hearing with her attorney, Blake Parker, and her witness, Julie Vinsand. Bridget Penick, Attorney at Law, appeared on the employer's behalf. Dick St. John, the owner; John Mulvihill, a sales representative; and Vickie Andersen, a sales representative, testified on the employer's behalf. During the hearing, Employer's Exhibits One and Two were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the

**Appeal Number: 04A-UI-05887-DWT
OC 05/02/04 R 01
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on May 1, 1989. She worked as a sales representative contacting businesses in an attempt to sell advertising. When the claimant started working, the employer allowed co-workers to smoke at their desks. The claimant's health deteriorated and she developed breathing problems. When the claimant told the employer about her breathing problems, the employer changed its policy and allowed employees to only smoke in the break room. This did not help the claimant enough, so the employer made further accommodations and did not allow any employee to smoke in the office. Employees could only smoke outside.

The employer shares the building with other businesses. An insurance agent who works in an office a short distance from the claimant's office smokes. The insurance agent does not work for the employer.

After the employer implemented the no-smoking policy, the claimant saw two people smoke in the office. She did not say anything to St. John about people smoking in the office. At various times, the claimant made comments to co-workers about how the office smelled. The claimant assumed the office smelled of cigarettes because the employer allowed employees to smoke in the office when the claimant was not at work. The claimant did not tell the employer what she would do if the employer did eliminate the odors in the office. At least one co-worker tried to prevent smoke from the insurance agent's office from getting into the employer's office.

At various times during her employment, St. John asked the claimant what she intended to do about her continuing her employment. The employer understood she was getting close to retirement age and knew she had health problems. Although the claimant did not appreciate the employer asking her when she planned to retire, she did not tell the employer she was offended by such remarks or that she felt the employer discriminated against her when he talked to her about retirement.

The claimant's daughter, Vinsand, worked for the employer as long the claimant. On about March 16, Vinsand unexpectedly quit her employment. In an attempt to make accurate last-minute changes in ads that Vinsand's clients wanted to make, the employer asked a number of employees to initially handle Vinsand's clients. When clients learned Vinsand was the claimant's daughter, they asked that the claimant handle their accounts. The employer granted the client's requests. While Vinsand's clients were also distributed to Mulvihill, the claimant received a majority of the accounts that had higher sales. The claimant considered the employer to have discriminated against her because the employer did not ask the claimant if she wanted to take over Vinsand's files. The claimant did not tell St. John she considered the employer's failure to give her all of Vinsand's account an act of discrimination.

St. John frequently talked to all sales representatives in an attempt to motivate them to get them to increase their sales. When the claimant's sales were down, she considered St. John's

comments about getting her sales increased harassment, which created additional stress for her.

The claimant also considered the employer to discriminate against her when she did receive the full amount of a split-dollar insurance program she cashed in during her employment. The claimant knew other employees received the full amount when they cashed in the insurance plan, but these employees did not have as much money invested as the claimant and they cashed in the insurance plan when they left the employment instead of during their employment like the claimant. Although the employer allowed the claimant to cash in the insurance plan, the employer told her that the employer did not have the financial means to pay her the full amount, \$30,000.00, right away. Instead, the employer asked the claimant if installment payments could be made and the claimant indicated this was acceptable.

The claimant called in sick on April 23 and 26. On April 27, 2004, the claimant told the employer she had to quit effective immediately because she was tired of the stress of the job. The claimant did not mention any other reason for quitting. In addition to the stress of the job, the claimant quit because she believed the employer discriminated against her based on her age and health problems; the employer refused to make the necessary accommodations she needed for her breathing problems; the employer declined to fully reimburse her when she cashed in her split-dollar insurance program; and the employer did not give her the opportunity to take all of her daughter's files as other employees had been allowed to do when a sales representative discontinued employment. The claimant's doctor did not advise the claimant to quit her employment.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code §96.5-1. The claimant voluntarily quit her employment on April 27, 2004. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant voluntarily quits with good cause when she leaves because of intolerable or detrimental working conditions. 871 IAC 24.26(4). The claimant quit in part because she concluded the employer did not make the necessary accommodations for her health-related problems. 871 IAC 24.26(6)(b). The evidence does not support the claimant's assertion. Instead, the claimant acknowledged the employer changed the smoking policy from employees being allowed to smoke at their desks to only smoking outside. While an employee may have sporadically smoked in the office, the claimant did not say anything to the owner about these incidents. Employees even tried to prevent smoke odor from another office in the building from permeating into the employer's office. While the claimant may have made general comments about the odor of the office, she did not indicate she would have to quit for medical reasons if the odor in the office was not eliminated.

The claimant also asserted she quit because the employer discriminated against her by asking her when she planned to retire. Given the claimant's health problems and the fact she was getting close to retirement age, the employer's inquiry amounts to poor judgment but does not by itself amount to age discrimination.

When the claimant's daughter left unexpectedly, the employer was in a bind and asked several employees, including the claimant, to make sure clients' immediate needs were addressed. Since the claimant received a majority of her daughter's accounts and the accounts with the

higher sales by March 30, 2003, the claimant's assertion that the employer again discriminated against her is without merit.

When the employer allowed the claimant to cash in the split-dollar insurance plan during her employment, the claimant agreed the employer could make installments on the money the claimant expected to receive. When the claimant quit, she had received all but \$2,000.00 of the \$30,000.00 she concluded she was entitled to receive. Even though the owner made a personal loan to an employee for \$2,000.00 just before the claimant quit, the business did not pay out \$2,000.00 to this individual as the claimant may have assumed. The evidence suggests the claimant may have been upset when the employer did pay the claimant her remaining \$2,000.00, but she did not say anything to the employer.

The facts indicate the nature of the employer's business is stressful because sales representatives are expected to sell so much money in advertising and their wages are based on commission. When a sales representative does not meet a goal, the employer talks to the employee and may reprimand the employee for low sales. When the claimant quit, her sales were low and she had just been home for two days because she was ill and unable to work. Quitting because she was tired of the stress is a compelling personal reason to quit. The claimant probably made the best decision for her personal well-being. Since she did not give the employer an opportunity to make any accommodations by telling the employer she might have to quit if certain problems were not addressed and resolved, the claimant did not establish that she quit for reasons that qualify her to receive unemployment insurance benefits. 871 IAC 24.26(6)(b). As of May 2, 2004, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's May 21, 2004 decision (reference 01) is affirmed. The claimant voluntarily quit her employment for compelling personal reasons. The claimant's reasons for quitting do not, however, qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of May 2, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/b