

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA A LEUANG VAN
Claimant

APPEAL NO: 06A-UI-08257-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ELECTRONIC DATA SYSTEMS
CORPORATION**
Employer

**OC: 07/16/06 R: 02
Claimant: Respondent (1)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Electronic Data Systems (EDS) filed a timely appeal from the August 8, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 31, 2006. Claimant Rebecca Leuang Van participated. Off-site Warehouse Supervisor Kevin Holen represented the employer.

ISSUE:

Whether Ms. Leuang Van quit for good cause attributable to the employer when she quit in response to a sexually charged rumor and after other incidents of sexually harassing behavior. The administrative law judge concludes the quit was based on good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Rebecca Leuang Van was employed by EDS as a full-time receiving clerk at EDS' off-site warehouse located in Urbandale from April 8, 1998 until June 29, 2006, when she quit. In March 2006, Kevin Holen became Off-site Warehouse Supervisor and Ms. Leuang Van's immediate supervisor. In May 2006, the employer implemented a formal code of conduct that prohibited, among other things, sexually harassing statements and/or behavior. The workforce at the warehouse where Ms. Leuang Van worked was predominantly male.

On June 29, Quality Control Team Lead Steve Exline had summoned Ms. Leuang Van and Mr. Holen to a meeting and notified them of a rumor that had come to his attention. The rumor was that someone had discovered Mr. Exline and Ms. Leuang Van "in a compromising situation." Mr. Exline indicated that Team Lead Jim Metz had brought the rumor to his attention. Mr. Metz had not behaved with any ill will, but had merely wanted Mr. Exline to be aware of the rumor. Mr. Exline indicated that he was very upset about the rumor, had reported it to his manager and that the manager was going to investigate the matter. Ms. Leuang Van was visibly upset by the rumor and left the meeting. A few minutes later, Ms. Leuang Van returned

to Mr. Holen's office. Ms. Leuang Van said that she was "tired of being made out a whore" and asserted her belief that the employer was not going to do anything about it. Ms. Leuang Van delivered her keys to the facility and left. Ms. Leuang Van was scheduled to work on June 30, but did not appear. Mr. Holen assumed that Ms. Leuang Van was merely cooling off. Ms. Leuang Van had previously requested and been approved for vacation during the period of July 3-7. When Ms. Leuang Van did not return after the scheduled time for her vacation, Mr. Holen concluded she had quit. It was not until this point that Mr. Holen reported the incident concerning the rumor to his superiors.

Prior to the incident on June 29, two male employees who had come from another facility to work at the warehouse had repeatedly made unwelcome sexual advances towards Ms. Leuang Van. The two male employees had invaded Ms. Leuang Van's personal space, had quizzed her on whether she had a boyfriend, had told her she was beautiful, and had whistled at her and made catcalls as she walked by. Behavior of this nature had most recently occurred on July 28, the day before the rumor came to Ms. Leuang Van's attention. The male employees would not engage in the inappropriate behavior when Mr. Holen or other supervisors were present. In May or June, Ms. Leuang Van had brought to Mr. Holen's attention that a young man had been hitting on her in the workplace.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Leuang Van's voluntary quit was for good cause attributable to the employer. 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.

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 indicates that Ms. Leuang Van was subjected to a pattern of sexual harassment that was intolerable and detrimental and which would have prompted a reasonable person to quit the employment. The evidence in the record indicates that Ms. Leuang Van's voluntarily quit was for good cause attributable to the employer. The evidence further indicates that Ms. Leuang Van's conclusion that the employer would take no steps to address the

harassment was accurate. Ms. Leuang Van is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Leuang Van.

DECISION:

The Agency representative's decision August 8, 2006, reference 01 is affirmed. 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