

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
HEATHER R MIFLIN Claimant	APPEAL NO. 12A-UI-01500-S2T
HY-VEE INC Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 12/18/11 Claimant: Respondent (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Hy-Vee (employer) appealed a representative's February 3, 2012 decision (reference 02) that concluded Heather Miflin (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 5, 2012. The claimant participated personally. The employer was represented by Julia Day, Employer Representative, and participated by Laina Cooney, Human Resources Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 11, 2007, as a full-time kitchen clerk. The claimant signed for receipt of the employer's handbook on September 11, 2007, and July 20, 2010. The claimant had problems with her supervisor. The supervisor had anger control issues. He threw and broke things on every shift. The claimant was afraid of him.

In early August 2010, the supervisor grabbed the claimant's arms and shook her. The claimant could see bruises on her arms where the supervisor grabbed her. The claimant reported this to the manager of store operations. The employer placed the supervisor in a room and forced him to apologize to the claimant. The employer did not notify the human resources manager of the incident.

On August 20, 2010, the supervisor was angry at the claimant for talking to the store manager about him. He told the claimant that if she was going to "fucking" higher management about him, she was not going to work in his "fucking" kitchen. The claimant was afraid of the supervisor and walked off the job.

The supervisor continues to work for the employer but did not testify at the hearing.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant voluntarily quit work with 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.

871 IAC 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

The law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that she intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. Hy-Vee, Inc. v. Employment Appeal Board and Diyonda L. Avant, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005).

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony but chose not to do so. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of to deny the claimant's allegations of abuse by the supervisor. The claimant notified the employer of the intolerable conditions when the supervisor grabbed and shook her. The claimant subsequently quit due to those conditions. The claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's February 3, 2012 decision (reference 02) is affirmed. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css