

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNIE M WALLERT
Claimant

APPEAL NO. 09A-UI-09956-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAPHIC EDGE INC
Employer

OC: 07/13/08
Claimant: Respondent (1)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Graphic Edge, filed an appeal from a decision dated July 8, 2009, reference 06. The decision allowed benefits to the claimant, Annie Wallert. After due notice was issued, a hearing was held by telephone conference call on July 28, 2009. The claimant participated on her own behalf and was represented by Stu Cochrane. The employer participated by Human Resources Director Peg Sanders. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Annie Wallert was employed by Graphic Edge from July 15, 2008 until June 2, 2009 as a full-time production worker on the night shift, which was from 4:30 p.m. until 3:30 a.m. In February 2009, she lodged a complaint against her supervisor, Larry Chartier, for sexual harassment. An investigation was done which found no evidence to support her contention. She was notified of this by Human Resources Director Peg Sanders on March 9, 2009, and told to keep in contact in case there were any more complaints.

On May 7, 2009, Ms. Wallert again complained about her supervisor, claiming she was watching her too closely and giving her “dirty looks.” Mr. Chartier had just had a meeting with her to discuss an issue with another employee and rumors in the workplace. During that meeting he had admonished her that she should not have gone to human resources with her previous complaint because they could have worked it out together, and if her boyfriend had a problem, he should speak to Mr. Chartier directly.

Around May 22, 2009, the claimant brought in a doctor’s note which stated the claimant suffered from fibromyalgia and her symptoms had recently increased. It stated this was “very likely” because of increased stress, along with “alleged sexual harassment” in the work place. This was submitted to Ms. Sanders, who took it as a request for accommodation of the medical condition. The decision was made to move the claimant to first shift so she would not have to work with Mr. Chartier, who seemed to be the cause of her stress.

Ms. Sanders informed the claimant on May 29, 2009, she was to begin the day shift on June 2, 2009. This shift was from 5:30 a.m. until 4:30 p.m. Ms. Wallert left a note in Ms. Sander's "In" box that evening stating she would not work the day shift. It would interfere with her personal life as her boyfriend worked the night shift, the reason she applied for a job at Graphic Edge in the first place. She was no-call/no-show to work on June 2, 2009, although she did attempt to work the previous night's night shift but was sent home. Ms. Sanders told her if she did not work the day shift then there would be no work for her.

REASONING AND CONCLUSIONS OF LAW:

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(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The administrative law judge found the claimant's case to be somewhat confusing, as Ms. Wallert maintained she was fired but her representative asserted she quit due to sexual harassment. The record does not support either of these contentions. There was no incident of sexual harassment on or around June 2, 2009, which would have caused her to quit for that reason. The note from the doctor cannot be considered dispositive of this issue as the doctor did no independent investigation to determine whether any sexual harassment had, in fact, occurred, around the time he wrote the note. There is no evidence of a discharge because work was available to her on the day shift, which she refused to work. The employer told her if she did not work the day shift, then there would be no work for her. The decision as to whether to continue her employment was entirely hers to make, and she elected not to do so.

The issue is then whether she had good cause attributable to the employer to the employer for quitting and the administrative law judge finds she did. She had been hired to work the night shift, the job for which she applied in order to maintain her personal relationship with her boy friend. There is nothing in the employee handbook which notifies employees they must be available to work whatever shift the employer felt was required. Moving from a night shift to a day shift under these circumstances does constitute a substantial change in the contract of hire. Under the provisions of the above Administrative Code section, this is good cause attributable to the employer.

DECISION:

The representative's decision of July 8, 2009, reference 06, is affirmed. Annie Wallert is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css