

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA S COLLINS
Claimant

APPEAL NO. 09A-UI-15777-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESTAR FOODS INC
Employer

OC: 09/20/09
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 15, 2009 (reference 02) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on November 23, 2009. Claimant participated. Employer did not respond to the hearing notice instructions and did not participate.

ISSUE:

The issue is whether claimant voluntarily left the employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part-time as a cashier and was separated on September 24, 2009. Claimant's supervisor of five years, general manager Pam, assigned her to the drive through register even though she knew she did not feel comfortable or do well at that job. Within two hours into the shift Pam raised her voice and called out how many minutes the car was waiting in the drive through in a mocking manner. Claimant felt like she was pushing and "it was just too much" so she laid her headset on the counter, went back to get her purse and coat and walked out. Pam had regularly called out to her while the bathroom, "Linda are you still in there?" within hearing range of coworkers and customers even though she knows claimant has a digestive problem. Pam asked her in front of others whether she would have to retrain her even though she had worked there for more than a decade, took over orders abruptly, physically bumped her out of the way, interfered with her order preparation, and publicly referred to claimant's size. She tried to talk to district manager John in the office but Pam was present and would not leave.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with good cause attributable to the employer.

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.

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.

Generally notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Regular public discipline and verbal humiliation created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The October 15, 2009, reference 02, decision is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible. The benefits withheld effective the week ending September 26, 2009 shall be paid to claimant forthwith.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs