

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

RHONDA R JACOBSON  
2211 SENECA DR  
BURLINGTON IA 52601

FAREWAY STORES INC  
2300 E 8<sup>TH</sup>  
BOONE IA 50036

Appeal Number: 04A-UI-04120-SWT  
OC 03/07/04 R 04  
Claimant: Respondent (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, 4<sup>th</sup> 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 is 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 1, 2004, reference 02, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on May 5, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Kim Garland participated in the hearing on behalf of the employer with witnesses, Joe Seago, Tim Stebbins, and Kevin McCormick.

FINDINGS OF FACT:

The claimant worked for the employer as a cashier from August 11, 2003 to February 7, 2004. Kevin McCormick was the store manager, Joe Seago was the assistant manager, and Tim Stebbins was the produce manager. The claimant's hours were reduced in January 2004 because the claimant had limited availability to work because she was receiving physical

therapy. The claimant did not think the employer was fairly distributing the hours in the store, and she could have been working more.

The claimant was scheduled to work at 5:00 p.m. on February 9, 2004. She thought she was scheduled at 4:00 p.m. When she arrived, Stebbins, the manager on duty, informed the claimant that she was not scheduled to work until 5:00 p.m. He would not let her start work early because McCormick had instructed him to make sure employees did not work outside their scheduled hours. Stebbins told her that she had to leave the property until her scheduled time. The claimant felt Stebbins was rude to her and was upset because she was already working very few hours. She left the store and walked home.

She was upset by Stebbins' treatment of her, the reduction in her hours of work, and McCormick's constant criticism of her taking too many bathroom breaks. The claimant was suffering from bladder problems that required her to need to go to the bathroom every couple of hours. McCormick questioned her bathroom breaks, and on one occasion suggested she should wear Depends, an incontinence product. She decided she would not return to work until these complaints were resolved. The claimant called after the start of her shift and told the manager on duty that before she came back to work, she needed to talk to McCormick or Seago. McCormick was on vacation until February 16. Seago did not get a message that the claimant wanted to speak with him. McCormick was also unaware that the claimant wanted to talk to him when he returned from vacation.

The claimant was scheduled to work on February 12, 2004. She called in and asked if either McCormick or Seago was in, but she was told that neither was in the store at the time. She said she was not coming into work that day, and again asked for McCormick or Seago to call her back. She did not receive a return call. An employee informed the claimant that her name had been crossed off the schedule. As a result, the claimant did not report to work on February 14 or notify the employer that she would not be at work. On February 17, 2004, the claimant wrote a letter to the company headquarters stating she was quitting due to McCormick's mistreatment of her regarding bathroom breaks, the reduction in her hours, and because of Stebbins' treatment of her. The letter said she would come back to work if McCormick was not the manager. The employer did not take any action to resolve her grievances and considered her to have quit when she was absent from work on February 9, 12, and 14.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without 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 Iowa Supreme Court in Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993), established conditions that must be met to prove a quit was with good cause when an employee quits due to intolerable working conditions or a substantial change in the contract of hire. First, the claimant must notify the employer of the unacceptable condition or change. Second, the claimant must notify the employer that she intends to quit if the condition or change is not corrected.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I do not believe that Stebbins' treatment of the claimant was intolerable. The reduction in the claimant's hours was the result of restrictions she had on her availability to work. I do conclude, however, that McCormick did question the claimant about her bathroom breaks, including making the intolerable comment about her needing to wear Depends. I do not believe the claimant lied or made that up. The next question is whether the claimant properly reported her complaint to the employer so that it can be said that the reason for quitting is attributable to the employer. The claimant attempted to resolve her problems by trying to talk to the store manager and assistant store manager. Her calls were not returned. The claimant notified the employer about her reasons for quitting in the letter on February 17, 2004, and suggested that she would return to work if McCormick was not manager. While the employer was not obligated to take the action demanded by the claimant, it was obligated to take some action to resolve the complaints raised in her letter. Good cause for leaving employment has been established in this case.

DECISION:

The unemployment insurance decision dated April 1, 2004, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/kjf