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

ROXCYANNA RINGEN
301 PINE ST
ANAMOSA IA 52205

TAPKENS CONVENIENCE PLUS INC
306 S ELM ST
ANAMOSA IA 52205-1730

Appeal Number: 05A-UI-12071-JTT
OC: 10/16/05 R: 03
Claimant: Respondent (2)

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, 4th 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.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

Tapkens Convenience Plus filed a timely appeal from the November 18, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 16, 2005. Claimant Roxcyanna Ringen participated. Owner Kyle Tapken represented the employer and presented additional testimony through owner Victoria Tapken. Exhibit A was received into evidence.

FINDINGS OF FACT:

Roxcyanna Ringen was employed by Tapkens Convenience Plus as a full-time cook from April 21, 2004 until June 10, 2005, when she voluntarily quit the employment. Ms. Ringen was unhappy in the work. Ms. Ringen believed that chores that the evening employees should have

completed were unfairly left for her on a routine basis. Ms. Ringen was unhappy that owner Victoria Tapken had recently hired two new employees and that Ms. Tapken intended to train one or both to work in the kitchen. On June 8, Ms. Ringen arrived for work in an agitated state. An 80-year-old retired farmer, John Albang, was a regular visitor to the convenience store and assisted the owners with various tasks. On June 8, Mr. Albang was at the store. Mr. Albang had gone to the bank to get change for the convenience store and returned with a bag heavy with coins. Mr. Albang needed to place the bag in the employer's safe, under a counter. Ms. Ringen was standing next to the safe. As Mr. Albang went about placing the bag of coins in the safe, the bag brushed against Ms. Ringen's calf. Ms. Ringen turned toward Mr. Albang and told him, "Don't touch my ass!" Owner Kyle Tapken was no more than a couple steps away and had observed the entire incident. Mr. Tapken knew that Mr. Albang had not intentionally touched Ms. Ringen. Mr. Tapken knew that Mr. Albang had not touched Ms. Ringen's buttocks. Mr. Tapken was aware that Ms. Ringen had been agitated when she arrived for her shift and decided not to say or do anything more about the incident he had just observed. Later that same day, Ms. Ringen alleged to Mrs. Tapken that Mr. Albang had sexually harassed her. Mrs. Tapken advised Ms. Ringen that she should not have to endure sexually harassing behavior. Mrs. Tapken advised Ms. Ringen that she would speak to Mr. Tapken about the incident. When Mrs. Tapken spoke to Mr. Tapken she learned that no sexual harassment had taken place.

Ms. Ringen alleges that Mr. Albang sexually harassed her on a regular basis. However, Ms. Ringen is able to provide minimal details of the alleged sexual harassment. Ms. Ringen was in the habit of giving and receiving hugs from Mr. Albang. Ms. Ringen asserts that Mr. Albang would hug her too closely and that this constituted sexual harassment. Ms. Ringen alleges that Mr. Albang once observed her carrying a sausage and commented that "his" was bigger. Ms. Ringen alleges that Mr. Albang once thrust his pelvis toward a counter in a sexually suggestive manner. However, Ms. Ringen is able to provide minimal information regarding when these alleged incidents took place. Prior to June 8, 2005, Ms. Ringen never mentioned to Mr. or Mrs. Tapken that Mr. Albang had behaved in an inappropriate and/or sexually harassing manner toward her.

After her shift on June 8, Ms. Ringen was next scheduled to work on June 10. On June 10, Ms. Ringen contacted Mr. Tapken to advise that her brother had been in a serious accident, that she needed to travel to Des Moines, and that she did not believe she would be able to come to work that day. Mr. Tapken advised Ms. Ringen to let the employer know when she got back to town and was able to work. Ms. Ringen came to the convenience store later that day to collect her paycheck. Mrs. Tapken was performing Ms. Ringen's duties in the kitchen and sent word, through the clerk, that she would like to speak with Ms. Ringen. Ms. Ringen left the store without speaking to Mrs. Tapken. Ms. Ringen was scheduled to work the next day, June 11. Ms. Ringen did not come to work or notify he employer that she needed to be absent. Ms. Ringen was scheduled to work the next day, Sunday, June 12, at 10:00 a.m. Ms. Ringen did not come to work or contact the employer. Two hours after the scheduled start of Ms. Ringen's shift, Mr. and Mrs. Tapken were at the local Wal-Mart and observed Ms. Ringen there.

Ms. Ringen made no additional contact with the employer until Friday, June 17, when she contacted Mrs. Tapken to ask where her check was. Ms. Ringen had gone to the store to collect her check and it had been there. Mrs. Tapken explained that the employer thought she quit, had mailed the check that morning, and that Ms. Ringen should receive the check the following day. Mrs. Tapken took the opportunity to ask Ms. Ringen why she had ceased coming to work. Ms. Ringen advised that she assumed, with all of her "problems," that she had

been discharged from the employment. Mrs. Tapken advised that Mrs. Ringen had not been discharged and that the employer continued to have work available for her. Later in the conversation, Ms. Ringen became belligerent, called Mrs. Tapken a "bitch," and uttered other profanity. Mrs. Tapken indicated that she did not use such language and did not wish to have such language directed toward her and terminated the conversation. On August 31, Ms. Ringen again contacted the Tapkens to inquire about a job.

Ms. Ringen established a claim for benefits that was effective October 16, 2005, and has received benefits totaling $1,456.00.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Ringen's voluntary quit was for good cause attributable to the employer. It does not.

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:
>
> d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

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 24.25(4). However, before such a quit will be considered for good cause attributable to the employer, the evidence must show that before the claimant resigned (1) the employer was on notice of the condition, (2) the employer was on notice that the claimant might quit if the condition was not addressed, and (3) the employer had a reasonable opportunity to address the claimant's legitimate concerns. See Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993); Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993); and Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa 1996). 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).

Ms. Ringen testified that she formed the intent to sever the employment relationship on June 8. While the weight of the evidence in the record indicates that Ms. Ringen did, in fact, form the intent to sever the employment relationship, the evidence indicates that the intent was formed later than June 8. If Ms. Ringen had quit the employment on June 8, there would have been no need to contact the employer on June 10 to advise that she could not come to work that day. The weight of the evidence indicates that Ms. Ringen did, in fact, call the employer on the morning of June 10, not to complain about sexual harassment or to quit, but to say that her brother had been injured, that she needed to travel to Des Moines, and that she could not come to work. The weight of the evidence in the record suggests that on June 10 Ms. Ringen did not provide the employer with a truthful reason as to why she would not be at work. Thereafter, Ms. Ringen simply ceased appearing for work.

The weight of the evidence in the record fails to support Ms. Ringen's assertion that she quit the employment due to sexual harassment. Despite presenting herself as the alleged victim of such serious conduct, Ms. Ringen's ability to provide meaningful details about the alleged conduct was conspicuously and suspiciously lacking. The weight of the evidence in the record fails to support Ms. Ringen's assertion that she had brought any alleged sexual harassment to the employer's attention prior to June 8, 2005. The weight of the evidence in the record establishes that no sexual harassing behavior took place on June 8. The weight of the evidence in the records fails to establish circumstances under which a reasonable person would have quit the employment.

The weight of the evidence in the record establishes that Ms. Ringen quit the employment due to dissatisfaction with the work environment and ceased coming to work after she concluded she had failed to report for work for a sufficient number of shifts to warrant discharge from the employment, though the employer had not asked her to leave the employment and continued to have employment available to her. These reasons for quitting the employment are presumed to be without good cause attributable to the employer and the weight of the evidence supports that conclusion that the quit was without good cause attributable to the employer. See 871 IAC 24.25(21) and (33).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Ringen voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Ringen is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Ringen.

Iowa Code section 96.3-7 provides:

> 7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.
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> If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment

compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The benefits Ms. Ringen has received constitute an overpayment that the law requires Ms. Ringen to repay.

DECISION:

The Agency representative's November 18, 2005, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged. The claimant is overpaid $1,456.00.

jt/kjw