

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**REBECCA L PARCHER**  
Claimant

**APPEAL NO. 06A-UI-08759-A**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TOP OF IOWA WHOLESALE LLC**  
Employer

**OC: 07-30-06 R: 02  
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Top of Iowa Wholesale, L.L.C. filed a timely appeal from an unemployment insurance decision dated August 22, 2006, reference 01, which allowed benefits to Rebecca L. Parcher. After due notice was issued, a hearing was held in Mason City, Iowa October 24, 2006, with Ms. Parcher participating and presenting testimony by Kenneth Parcher, Lucy Heiken, and Christopher Parcher. Exhibits A and B were admitted into evidence on her behalf. Richard S. Piscopo, Jr., Attorney at Law, appeared on behalf of the employer. Co-Owners Gary Arp and Susan Arp testified. Employer Exhibits One and Two were admitted into evidence.

**ISSUE:**

Did the claimant voluntarily leave employment with good cause attributable to the employer?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Rebecca L. Parcher was employed part-time as an office clerk by Top of Iowa Wholesale from September 13, 2004 until she resigned August 1, 2006. The final incident leading to the resignation occurred on Friday, July 28, 2006. As Ms. Parcher arrived for work, she saw Co-Owner Gary Arp urinating in the grass on company premises. Ms. Parcher was greatly upset by this.

Ms. Parcher suffers from rheumatoid arthritis. She had found it difficult to secure employment in the past and did not wish to act hastily. She worked through the day, avoiding contact with Mr. Arp. She discussed the situation with her husband over the weekend. On Monday, she notified Co-Owner Susan Arp that she would not be able to work that day because of personal business. On Tuesday, August 1, 2006, she went to the workplace, accompanied by her husband. She spoke to Susan Arp, telling her of the incident of the previous Friday and also outlined several earlier instances in which she had felt that Mr. Arp had touched her inappropriately. On one occasion, he had placed his hand on the inside of her thigh as he leaned across her chair to throw something into the wastebasket in the office. On another occasion, he placed his hand around Ms. Parcher's rib cage just below her breast as

Ms. Parcher showed some papers to him. On another occasion, he had leaned over Ms. Parcher, nearly causing her to fall.

On another occasion, Ms. Parcher had felt uncomfortable when Mr. Arp had commented that the office lighting looked “romantic” at a time that the overhead lights were off and the office was illuminated only by the light from Ms. Parcher’s computer screen.

In February 2005, the day after the incident involving Ms. Parcher’s rib cage, Ms. Parcher had told Mr. Arp that he needed to stop touching her in such a manner. Mr. Arp apologized but said that he had a short memory and that Ms. Parcher might need to remind him from time to time.

After submitting her resignation on August 1, 2006, Ms. Parcher spoke briefly to Mr. Arp as she and her husband left the premises. Mr. Arp apologized, saying that he had not realized that Ms. Parcher was present.

Mr. Arp has been treated for bladder cancer. Sometimes he feels the urgent need to urinate. If he is outdoors, he does so outdoors. Nevertheless, he sometimes goes outdoors to urinate when the urge strikes him while he is in his office even though the restroom is closer to his office than is the door to the building.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the record establishes that the claimant left work with good cause attributable to the employer. It does.

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.

The claimant has the burden of proof. See Iowa Code section 96.6-2. An individual may receive unemployment insurance benefits if the evidence establishes that the individual resigned because of intolerable or detrimental working conditions. See 871 IAC 24.26(4). The language of the rule does not require that the employer deliberately cause the intolerable or detrimental working condition. Furthermore, the Supreme Court of Iowa has ruled in other instances that an employer’s motivations are not to be considered in determining whether good cause attributable to the employer exists. See, for example, Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988) and Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). Prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005).

In his testimony, Mr. Arp repeatedly professed to have no recollection of incidents related by Ms. Parcher. The notable exception was that he was quite certain that he had finished urinating before she arrived on July 28. Despite this clear memory, he also could not recall having apologized to Ms. Parcher on the day of her resignation. His statements were confirmed, however, by the testimony of Ms. Parcher, her husband and Ms. Arp. The administrative law judge discounts Mr. Arp’s testimony as to the final incident. He concludes that Mr. Arp was urinating or had just completed doing so when Ms. Parcher arrived. Mr. Arp exposed himself to Ms. Parcher.

Having said this, the administrative law judge makes no conclusion as to whether the exposure was deliberate or inadvertent. For unemployment insurance purposes, at least, the employer's intent is immaterial. Mr. Arp's actions created the intolerable conditions. An employee may reasonably expect not to be exposed to the genitalia of her or his employer under any circumstances. Benefits are allowed.

**DECISION:**

The unemployment insurance decision dated August 22, 2006, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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