

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN S DONSCHESKI
Claimant

APPEAL NO. 10A-UI-13075-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

RELIANCE CONSTRUCTION OF IOWA
Employer

OC: 09/13/10
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated September 13, 2010, reference 02, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 4, 2010. The claimant participated. The employer participated by Todd Jepsen, owner. The record consists of the testimony of Karen Donscheski and the testimony of Todd Jepsen. This case was heard in conjunction with 10A-UI-13076-VST.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked part-time for the employer in this case, Reliance Construction of Iowa, and part-time for another employer, T & J Service Inc. Both of these employers are owned by Todd Jepsen. T & J Service Inc. provides tire sales and service as well as oil changes. The claimant worked as a receptionist and bookkeeper for T & J Service and also did bookkeeping for Reliance Construction of Iowa. She was required to be physically present at T & J Service Inc. from 8:00 a.m. to 4:00 p.m. The claimant began working full-time on September 5, 2009. The claimant physically left the employer's place of business on August 6, 2010, although she performed some services for the employer until August 10, 2010.

The events that led to the claimant's decision to quit her job date back to at least April 2010. The claimant worked with another employee named TJ. TJ had mood swings and would become easily angered. When he became angry, he would slam things and yell and use excessive profanity. The claimant was the primary target of these outbursts. In April 2010, he became enraged about a scheduling and slammed a chair into a desk. The claimant was frightened by TJ. She brought her concerns to her employer, but she also spoke to TJ about how they needed to get along.

The atmosphere at the tire shop improved slightly, but in June 2010 TJ was frequently irritated. On July 6, 2010, he stood and slammed his fist on a desk while screaming at the claimant. The claimant was again frightened by TJ's actions. She got depressed and found herself crying every night when she went home. She was also becoming physically ill. On August 3, 2010, a Tuesday, the claimant approached TJ about the price for trailer tire. TJ violently grabbed the tire and began using profanity (the f word) and yelling at the claimant.

On August 6, 2010, the claimant found a note from TJ concerning some time off. The claimant wanted to clarify the exact days he would be taking off, as his note was not clear to her. When she asked him, he told her to read the fucking note. He called the claimant a whine-ass shit and a hard-ass woman and he was fed up with her. The claimant did not feel she could take it any longer and she left the premises.

Several conversations ensued between the claimant and the employer. The claimant asked if she could work at home and go to the tire store when TJ would not be there. The employer did not agree to these changes. Mr. Jepsen's wife decided to quit her job and take over the bookkeeping.

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(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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The evidence in this established that the claimant did initiate the separation of employment. She made the decision that she could not work any longer with TJ and requested her employer make some adjustments in her work schedule that would permit her to keep her job but stay away from TJ. The employer did not agree.

The greater weight of the evidence persuades the administrative law judge that the claimant was working in a detrimental and hostile environment. No employee should have to tolerate what the claimant was subjected to from a fellow employee. Mr. Jepsen agreed that the use of profanity should not have to be tolerated in the workplace, but he testified that he could not solve a problem he did not know about. The claimant credibly testified that she did tell

Mr. Jepsen about the problem with TJ on several occasions but that she did not feel he was doing anything about it. A reasonable person could interpret TJ's language and actions as threatening, demeaning, and intolerable. The claimant has shown that she quit her job with good cause attributable to the employer. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's decision dated September 13, 2010, reference 02, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw