

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

LINDA L HOPKINS
2046 ELK ST
OSCEOLA IA 50213

FMC/MARC INC
D/B/A ARBY'S
c/o JOHNSON AND ASSOCIATES
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 04A-UI-06379-RT
OC: 05-16-04 R: 03
Claimant: Appellant (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, 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 Quitting

STATEMENT OF THE CASE:

The claimant, Linda L. Hopkins, filed a timely appeal from an unemployment insurance decision dated June 4, 2004, reference 02, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on July 6, 2004 with the claimant participating. David Meter, Regional Director of Operations; Richard Carroll, District Manager; and Lisa Kurtz, Human Resources Coordinator, participated in the hearing for the employer, FMC/MARC Inc., doing business as Arby's. The employer was represented by Suzanna Etrich of Johnson and Associates.

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: The claimant was employed by the employer as a full-time unit director at the employer's Osceola, Iowa, location from October 7, 2002 until she voluntarily quit on May 21, 2004. On that day, the claimant called the employer's witness, David Meter, Regional Director of Operations, and left a message for him. Mr. Meter received the message and attempted to call the claimant several times that day but was unable to reach her and finally left a message for her that he had tried to call. When the claimant was unable to reach Mr. Meter, she called and spoke to the employer's witness, Lisa Kurtz, Human Resources Coordinator. The claimant explained the problem that she had had the day before, May 20, 2004, with her supervisor, Richard Carroll. Both Mr. Carroll and the claimant had gone to a training meeting but in separate vehicles. When the claimant returned to her store at approximately 10:45 a.m. to 11:00 a.m., she found the store in a mess and, among other things, the onions were cut too small. Mr. Carroll then arrived at the store at approximately 11:15 to 11:45 a.m. and initially observed the store from the outside and then entered about 12:05 p.m. He noticed issues about the size of the onions and other troubling matters at the store. Mr. Carroll admonished the claimant but not privately or in any detail because it was at the busy lunch period. Mr. Carroll did not use profanity. Later, Mr. Carroll met with the assistant manager, Kent Powell, and admonished him about the conditions of the store but did not use profanity. Then, Mr. Carroll pointed to the claimant and stated it was her turn, meaning it was her turn to be admonished for the condition of the store. This was a private conversation. Mr. Carroll admonished the claimant for the condition of the store and, in particular, the size of the onions and other matters. Mr. Carroll was stern but did not use profanity. The claimant took the deposit bag to the bank and when she returned Mr. Carroll had left.

When the claimant spoke the next day, May 21, 2004, to Ms. Kurtz, she told Ms. Kurtz that she had left her keys at the store and that she had quit. Meanwhile, Mr. Meter went to the store and interviewed the employees and all agreed that they had not heard Mr. Carroll use any profanity toward the claimant. The claimant had left her keys and uniform at the store with Julie Showers, Shift Manager, and told her that that was her final day. Ms. Showers then called Mr. Carroll and informed him of what had taken place. The next day, May 22, 2004, Mr. Meter talked to the claimant believing that she had already quit and informed her that she had resigned and the claimant conceded that she had.

Mr. Carroll had been the claimant's supervisor since she had been employed with the employer.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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(2), (3), (4) provide:

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:

- (2) The claimant left due to unsafe working conditions.
- (3) The claimant left due to unlawful working conditions.
- (4) The claimant left due to intolerable or detrimental working conditions.

871 IAC 24.25 provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer.

871 IAC 24.25(21), (22), (28) provide:

- (21) The claimant left because of dissatisfaction with the work environment.
- (22) The claimant left because of a personality conflict with the supervisor.
- (28) The claimant left after being reprimanded.

The parties concede that the claimant left her employment voluntarily or voluntarily quit, and the administrative law judge concludes that the claimant did voluntarily quit on May 21, 2004. The issue then becomes whether the claimant left her employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant testified that she quit because of an altercation with her supervisor, Richard Carroll, on May 20, 2004 when Mr. Carroll yelled and screamed and repeatedly used profanity. Mr. Carroll denies any profanity or that he was yelling at the claimant. Mr. Carroll concedes that he admonished the claimant and the assistant manager, Kent Powell, for the condition of the store and, among other things, the size of the onions and other matters. The administrative law judge concludes that there is not a preponderance of the evidence that Mr. Carroll acted improperly. Mr. Carroll's testimony is more credible. First of all, his testimony appeared more credible. Secondly, his testimony is confirmed by David Meter, Regional Director of Operations and one of the employer's witnesses. He testified that he arrived at the store and interviewed the employees and none of the employees agreed with the claimant's version of the incident. The claimant also denied that she quit on May 21, 2004 but this is

belied by the testimony of Mr. Carroll, Mr. Meter, and the employer's other witness, Lisa Kurtz, Human Resources Coordinator, who all testified that the claimant quit on May 21, 2004. Ms. Kurtz testified that the claimant told her she was quitting and Mr. Carroll testified that he was told by the shift manager, Julie Showers, that the claimant had quit on May 21, 2004. The claimant concedes that she left her keys and her uniforms at the employer's location on May 21, 2004. This further supports the testimony of the employer's witnesses. Finally, the claimant testified that Mr. Carroll had been her supervisor since she had been employed and he had never acted like that before. The administrative law judge believes that the claimant's version would be out of character from what Mr. Carroll had displayed in the past and also casts doubts on the claimant's testimony.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that all Mr. Carroll did was admonish the claimant and that his actions did not make the claimant's working conditions unsafe, unlawful, intolerable or detrimental. Rather, the evidence indicates that the claimant quit because she was reprimanded by Mr. Carroll but this is not good cause attributable to the employer. There was some evidence that the claimant was dissatisfied with her work environment and that she had a personality conflict with her supervisor but these reasons are also not good cause attributable to the employer for a voluntary quit. There is no evidence that the claimant ever expressed any concerns to the employer about these matters and indicated or announced an intention to quit prior to her quit and with sufficient time for the employer to address these matters or at least to investigate them. As noted above, the administrative law judge concludes that the claimant quit on May 21, 2004 when she spoke to Lisa Kurtz and this was the first time that the claimant had directly expressed concerns about the incident with Mr. Carroll to anyone from the employer.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer, and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

DECISION:

The representative's decision of June 4, 2004, reference 02, is affirmed. The claimant, Linda L. Hopkins, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer.

tjc/b