

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRYSTAL D WEATHERLY
Claimant

APPEAL NO. 11A-UI-11976-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRANDVIEW HEIGHTS INC
Employer

**OC: 08/14/11
Claimant: Respondent (2)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Crystal Weatherly filed a timely appeal from the September 2, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 5, 2011. Ms. Weatherly participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

ISSUE:

Whether Ms. Weatherly's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Crystal Weatherly was employed by Grandview Heights nursing home as a full-time certified nursing assistant from February 2010 until August 13, 2011, when she voluntarily quit based on conflict with another certified nursing assistant. Ms. Weatherly had suffered a workplace injury on June 3, 2011 and had been placed on light duty. For a month, Ms. Weatherly was restricted to pushing, pulling, and lifting no more than five pounds. The coworker made regular statements pressuring Ms. Weatherly to perform work that exceeded her light-duty work restrictions. The coworker refused to assist Ms. Weatherly so that Ms. Weatherly and the employer could comply with Ms. Weatherly's medical restrictions. Ms. Weatherly repeatedly complained to a supervisor. The supervisor told Ms. Weatherly that she should just ignore the coworker. The coworker continued with demeaning comments. Ms. Weatherly completed physical therapy and was released to return to her regular duties on July 21, 2011. Thereafter, the same coworker who had been uncooperative about Ms. Weatherly's medical restrictions refused to assist Ms. Weatherly with residents who required a two-person transfer. Ms. Weatherly complained to the director of nursing, who challenged Ms. Weatherly's assertion that any of the residents required a two-person transfer.

Ms. Weatherly was off work from July 28, 2011 and returned to work on August 12, 2011. Ms. Weatherly arrived at work to learn that she would be working with the same coworker who had caused her problems in the past. When the coworker learned that she would be working with Ms. Weatherly, the coworker came in the proximity of Ms. Weatherly holding her head and said, "Oh my God." When Ms. Weatherly attempted to provide a status report regarding residents the two employees needed to provide care to, the coworker refused to cooperate then told Ms. Weatherly, "Oh do whatever you want." Ms. Weatherly quit the employment the next day.

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.

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 24.26(4). 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). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

On the other hand, when an employee voluntarily quits due to an inability to work with other employees, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(6).

The weight of the evidence in the record establishes that Ms. Weatherly was being harassed on an ongoing basis by coworker. Ms. Weatherly had repeatedly complained to the employer. The conduct perpetrated by the coworker, the conduct to which the employer provided an inadequate response, created intolerable and detrimental working conditions that might prompt a reasonable person to leave the employment. Ms. Weatherly quit the employment for good cause attributable to the employer. Accordingly, Ms. Weatherly is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Weatherly.

DECISION:

The Agency representative's September 2, 2011, reference 01, decision is reversed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw