

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KASSANDRA J SHREVE
Claimant

APPEAL NO. 09A-UI-10048-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOC SERVICES LLC
Employer

**Original Claim: 12-07-08
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Leaving
871 IAC 24.26(4) – Intolerable Working Conditions

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 2, 2009, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on July 29, 2009. The claimant did participate. The employer did participate through Sarah Frank, Benefits and Training Supervisor.

ISSUE:

Did the claimant voluntarily quit her employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant was employed as a valet attendant, part-time, beginning January 7, 2009, through April 16, 2009, when she voluntarily quit.

The claimant quit because she was being harassed by her supervisor, Jesse. Jesse would make sexually suggestive comments or requests to the claimant, including asking her for back massages, getting some tequila in her so her clothes would fall off, or telling her how good she looked. Jesse would also make comments in front of the claimant about customers, including how one woman was a "MILF." The claimant's complaints were investigated by the employer, who determined they were valid and disciplined Jesse for inappropriate comments and behavior. After the claimant complained, Jesse continued to call her for non-work-related reasons despite her request that he not do so.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with good cause attributable to the employer.

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(3) and (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:

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

Generally notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

The U.S. Supreme Court has held that a cause of action for sexual harassment may be predicated on two types of harassment: (1) Harassment that involves the conditioning of concrete employment benefits on sexual favors, and (2) harassment that, while not affecting economic benefits, creates a hostile or offensive working environment. *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 62 (1986).

The claimant's supervisor, Jesse, created an intolerable and hostile work environment for claimant with his constant calling her and his sexually suggestive comments to her and about others, including customers. His behavior gave the claimant a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The July 2, 2009, reference 03, decision is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw