

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARLA J BILLICK
Claimant

APPEAL NO. 08A-UI-10266-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRYSTAL PROPERTIES INC
Employer

OC: 10/05/08 R: 03
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Marla J. Billick (claimant) appealed a representative's October 28, 2008 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Crystal Properties, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 18, 2008. This appeal was consolidated for hearing with one related appeal, 08A-UI-10265-DT. The claimant participated in the hearing and presented testimony from one other witness, Jeannie Poole. Jay Wills appeared on the employer's behalf and presented testimony from one other witness, Virginia McGuire. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on August 6, 2007. She worked full time as a dietary aide / cook assistant in the employer's Oskaloosa, Iowa, long-term care nursing facility. Her last day of work was October 3, 2008. She voluntarily quit on October 6.

The claimant had been becoming increasingly concerned about work conditions in the employer's kitchen, including problems in trying to get necessary cleaning work done when the employer was controlling and reducing the staff's work hours. There had been a number of problems in the employer's kitchen area for several months, including malfunctioning equipment and vermin, including both bats and insects, of which the employer was aware. While the claimant was working on October 3, there were two incidents, one in which a cockroach fell out of a bag containing a loaf of bread onto the floor and was killed, and another where the claimant picked up some plates to discover that there was a bat laying on top. Several of the staff quit that day; the claimant debated about the situation over the next several days while she was off and then determined she could not continue to work under those conditions.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Intolerable or detrimental working conditions are good cause for quitting attributable to the employer. 871 IAC 24.26(4). The claimant has demonstrated that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. EAB, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). A claimant does not have to specifically give notice of a serious problem or of her intention to quit if her concerns are not addressed by the employer where the employer was independently aware of a condition that is clearly intolerable, unlawful, or unsafe. Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005); Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa 1996); Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). Here, the employer was already aware of an obvious problem, it already had the opportunity to address or resolve the situation. As it did not take effective action to address or resolve the problem, it then has made the cause for quitting "attributable to the employer." Benefits are allowed.

DECISION:

The representative's October 28, 2008 decision (reference 01) is reversed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw