

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENISE CAMPBELL
Claimant

APPEAL NO. 09A-UI-09931-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CROSS-DILLON TIRE INC
Employer

OC: 06-07-09
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 2, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on July 27, 2009, and continued August 18, 2009. The claimant participated in the hearing with Bill Phipps, Service Technician, and Shane Bobb, former Tire Technician. John Buettner, Vice-President; Mike Dillon, President; and Kathy Sherman, Human Resources, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time general manager for Cross-Dillon Tire from January 26, 2009 to June 8, 2009. She voluntarily left her position because of a hostile work environment. Jerry Newton, an off-the-road salesman, continuously undermined the claimant's authority, challenged her decisions, told employees to do things his way rather than the way instructed by the claimant, and second-guessed the claimant's decisions about improvements. Around February 9, 2009, the claimant called John Buettner, Vice-President, about her disagreements with Mr. Newton and he told her to "relax, calm down" and said he would speak to Mr. Newton, but the claimant did not notice any changes in Mr. Newton's behavior. On March 16, 2009, Mr. Newton questioned why the claimant did something and told her some of her choices were "stupid." The claimant called Mr. Buettner again and complained about Mr. Newton's behavior and he listened and indicated he understood, but Mr. Newton's attitude did not change. On April 13, 2009, the claimant stated she was not feeling well and Mr. Newton stated she did just have a birthday so maybe she was going through menopause. Around May 4, 2009, the claimant was outside the building when she overheard Ron Kent, Service Employee, say, "I don't know what kind of mood she's in. Obviously Shane didn't give it to her hard enough this weekend." The claimant worked with former Tire Technician Shane Bobb and the claimant naturally assumed he was talking about her, although Mr. Kent, with whom the claimant also

had problems, said he was “talking about another Shane.” That evening she reported the situation to Mr. Buettner and he told her to hold off on taking any disciplinary action until he talked to President Mike Dillon. Mr. Dillon called the claimant the following morning and said she could not take any disciplinary action against Mr. Kent unless she wanted to write up other employees for an incident approximately two months earlier that the claimant did not learn about until much later where Mr. Newton and Mr. Kent had been riding around in a truck all day and when they came back one of the servicemen said, “What did you guys do – go get married? Who was the husband and who was the wife.” Approximately one month later, Mr. Buettner was in town and the claimant gave everyone a verbal warning because Mr. Kent was offended by the comments. Mr. Kent complained to Mr. Buettner at the time of the incident instead of the claimant, who was his general manager. On June 5, 2009, Mr. Newton called the claimant “stupid.” On June 8, 2009, Mr. Newton called the claimant as she was going out the door and asked why she gave Mr. Bobb the day off. She explained he had family in town and Mr. Newton said that was stupid because they were already short-handed. He referred to Mr. Bobb as her “boy” and the claimant decided that was the final straw and she left her position.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. While the claimant may not have met the employer's expectations as a general manager, the employees who worked for her, especially Mr. Newton and Mr. Kent, were openly disrespectful and made comments that were sexually harassing in nature, including the statements that “maybe (she) was going through menopause” and, “Obviously Shane didn't give it to her hard enough over the weekend,” referring to the claimant and a co-worker. The employer did not step in immediately and tell employees their conduct was unacceptable, inappropriate, and unprofessional and would not be tolerated. The claimant too showed insensitivity to sexual harassment by stating that the comments made about Mr. Newton and Mr. Kent getting married were “shop talk” but what was said to her was much more serious. The working conditions endured by the claimant, however, were arguably unlawful and definitely intolerable and detrimental. Therefore, the administrative law judge must conclude the claimant has demonstrated her leaving was for good cause attributable to the employer. Benefits are allowed.

DECISION:

The July 2, 2009, reference 01, decision is affirmed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw