

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JEAVENIA J JONES
Claimant

AEROTEK INC
Employer

APPEAL 15A-UI-10094-H2
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/01/15
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.5(1) – Voluntary Leaving
871 IAC 24.26(4) – Intolerable Working Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 4, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. An in-person hearing was held on September 24, 2015 in Des Moines, Iowa. Claimant participated. Employer did not participate. Claimant's Exhibits A, B and C were entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct or did she voluntarily quit her employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was last assigned by Aerotek, Inc. to work full time as a customer service representative full time at the Cognizant call center beginning on March 16, 2015 through August 19, 2015 when she was discharged from the assignment and then voluntarily quit her employment.

Four of the claimant's coworkers at the assignment were treating her in a disrespectful manner and calling her names. They would tell her she stunk, that she needed flagel (a gas medication) and that her armpits stunk. The claimant asked her coworkers repeatedly to stop harassing her but they continued to call her names and subject her to ridicule. After they would not cease, she went to Benita, a Cognizant employee to complain about how her coworkers were treating her. Benita spoke to the four coworkers and for a time they ceased. Benita also moved the claimant to a cubicle further away from the other offending employees. After a few days they again began to taunt and torment the claimant. The claimant continued to ignore them, but even when she walked by they would shout "armpit" or would spray perfume in the air when she walked by.

The claimant complained to her recruiter Callie, who was an Areotek employee about what was occurring. Callie merely told her that the employer would not move her as it would look bad. Areotek took no action to stop the harassment the claimant was being subjected to in the work place.

By August 18 Callie was no longer an employee of Aerotek. The claimant called Cody at Aerotek to ask for assistance again. She called Cody on August 18, seven times but did not heard back from him until August 19 at 4:00 p.m. when he called her to tell her she was being discharged from the assignment at Cognizant. The claimant had done nothing wrong while employed, had merely asked the employer to stop her coworkers from harassing her. Because Aerotek had done nothing to assist her when she was being harassed and because they had discharged her from an assignment for no reason, she refused to continue working for them and voluntarily quit her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from the assignment for no disqualifying reason.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was discharged from her assignment merely because she complained about being treated in a harassing intolerable manner. Since employer has not established misconduct with respect to the separation from the assignment, benefits are allowed on that basis. The next question is whether claimant's separation from the temporary agency employer is disqualifying.

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 § 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.

Iowa Admin. Code r. 871-24.26(4) provides:

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:

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

No notice of intent-to-quit requirement is in rule 871-24.26(4), the intolerable working conditions provision. 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 claimant has established that her treatment by her coworkers at Cognizant created an intolerable work environment. Her employer took no action to stop the treatment. Thus the claimant has established good cause reason for leaving the employment of Aerotek, Inc. Benefits are allowed.

DECISION:

The September 4, 2015 (reference 01) 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. The benefits withheld shall be paid to claimant forthwith.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs