

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PURNIMA PATEL
Claimant

APPEAL NO. 110-UI-02476-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURGER KING
Employer

OC: 06/27/10
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's July 26, 2010 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated at several hearings with her attorney, Jay Kamath. At in-person hearings on September 7 and November 9, 2010, Lori Havig and Piyush Patel, the claimant's son, testified. K.L. Mian, the owner; Janelle Vickers, a district manager; Lea Sorenson, a general manager; Jeff Boogs, an assistant manager; and Amber Holmes, an assistant manager, participated at these hearings on the employer's behalf. During the hearing on September 7, Swarupa Bakre interpreted the hearing. During the November 9 hearing, Sujali Patel interpreted the hearing. During these hearings, Claimant Exhibit One and Employer Exhibits A through V were offered and admitted as evidence.

Based on the testimony presented on September 7 and November 9, an administrative law judge issued a December 27 decision affirming the representative's decision that disqualified the claimant from receiving benefits. The claimant appealed the decision to the Employment Appeal Board. The Employment Appeal Board remanded this matter to the Appeals Section because a 44-minute section of the hearing on September 7 was completely inaudible due to static on the audio file.

The parties agreed that instead of redoing the hearing, the transcript prepared by the Employment Appeal Board would be supplemented by the parties presenting additional testimony.

The parties presented additional testimony on May 11, 2011. Chandrika Shah interpreted for this hearing. The claimant and Lori Havig were the only witnesses who testified. The employer chose to stand on the testimony that had been previously given. Based on the evidence as set forth in the transcript of the September 7 and November 9 hearings, the evidence presented during a May 11 phone hearing, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer in June 1999 as a full-time crew member. During her employment, the claimant asked the employer to transfer her several times to different stores. The employer understood she asked to be transferred because of problems the claimant had with either the general manager at the store or other employees. The claimant asked the employer to transfer her to the East 13th Street location in 2004. Sorenson began working as the manager at this location the last three years of the claimant's employment.

Sorenson was hired to get the East 13th Street location up to standards. She required employees to follow the employer's policies and procedures. Sorenson considered the claimant a valuable employee and claimant knew her job, but sometimes needed counseling. During the claimant's employment, Sorenson gave the claimant warnings and talked to her when the claimant did not do something correctly. The claimant was sensitive to criticism or when the employer talked to her when she did not follow the employer's procedures. One time, Sorenson yelled at the claimant during a busy or stressful situation at the restaurant. Sorenson recognized the fact she should not have yelled at the claimant and later personally talked to the claimant. After apologizing, the two women hugged one another. Sorenson did not realize the claimant considered the way Sorenson interacted with her as harassment.

When the claimant had problems getting along with a manager, she tried to talk to Mian outside of work because they were personal friends. Mian would not allow the claimant to talk to him about work issues outside of work. He regularly visited his restaurant and told her that if she had any concerns to talk to him about them at the restaurant. The claimant did not do this. The claimant could also talk to Vickers about problems, but did not usually do this, either.

When the claimant did not request time off for her son's graduation, she was scheduled to work on the day he graduated. She was upset and contacted Mian about this. Although the claimant assumed Sorenson scheduled her to work that day, Vickers did the schedule. After Vickers learned about the claimant's conflict, Vickers reworked the schedule so the claimant could attend her son's graduation.

Although the claimant believed the employer singled her out about going to the bathroom, the employer noticed the claimant always went to the restroom around 8 a.m. Since the claimant was seen with her cell phone, the employer assumed she was calling her son to make sure he was up to go to school. After the employer noticed several times the claimant was not cooking and customers were waiting for food, Sorenson asked the claimant to make sure she let her know when she had to go to the restroom. If customers were waiting for food, the employer wanted the claimant to wait a few minutes so customers could be timely served or someone could temporarily take over the claimant's duties.

Toward the end of her employment, the employer changed some procedures. The claimant had a difficult time adapting to some of these changes. On June 25, 2010, Sorenson and Holmes were going to counsel the claimant about some work performance issues. They asked the claimant to go to the office so they could give her a write-up to sign. The claimant did not want to sign the write-up. The employer told the claimant she was not in trouble, but the claimant was upset about getting a warning. Instead of going to the office, she went to the locker, removed her personal property and left. The claimant did not return to work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5(1). When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code § 96.6(2).

The law presumes a claimant voluntarily quits employment with good cause when she leaves because of intolerable or detrimental working conditions. 871 IAC 24.26(4). The law also presumes a claimant voluntarily quits without good cause when she leaves because of a personality conflict with a supervisor or leaves after being reprimanded. 871 IAC 24.25(22), (28).

First, since Havig only worked five months with the claimant and has not worked for the employer since March 2009, her testimony about how the claimant was treated based on the claimant's conversation is given little if any weight. The evidence establishes the claimant perceived Sorenson or anyone who talked to her about work performance issues as a harasser. The claimant became emotional when the employer talked to her about a problem. The fact the claimant was emotional does not establish that she was harassed. There were some conflicts between the claimant and Sorenson that Vickers knew about, but there is no evidence Sorenson harassed the claimant or treated her any differently than any other employee. The employer understood the claimant had personal issues and tried to accommodate her work schedule. Upon the claimant's request, the employer scheduled her for nights, but then returned her to working in the morning upon the claimant's request.

It is also clear that the claimant did not understand everything Sorenson had to do in the mornings. Yes, there were times it was very busy at the restaurant and Sorenson may not have gotten up to help the claimant as soon as she could have, but, again, the facts do not establish that she created intolerable working conditions for the claimant.

Even though the claimant asserted Sorenson had been harassing her for the last several years, the claimant did not leave until the employer asked her to sign a written warning. Holmes told the claimant she was not in trouble; the employer just wanted her to understand what she had not done correctly. The evidence indicates it was difficult for the claimant to accept the changes the employer made.

The claimant established compelling personal reasons for quitting. The evidence does not establish she quit because of intolerable or detrimental working conditions. Instead, she quit because she did not want to sign a written warning. As of June 27, 2010, the claimant is not qualified to receive benefits.

DECISION:

The representative's July 26, 2010 determination (reference 01) is affirmed. The claimant voluntarily quit her employment for compelling reasons, but these reasons do not qualify her to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of June 27, 2010. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw