

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MISTY D CALE**  
Claimant

**APPEAL NO. 17A-UI-08732-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE VIEWS OPERATOR C LLC**  
Employer

**OC: 07/30/17**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Misty Cale filed a timely appeal from the August 14, 2017, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Ms. Cale voluntarily quit on July 26, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on September 13, 2017. Ms. Cale participated. Attorney Brian J. Fagan represented the employer and presented testimony through Lisa Hanson and Jean Westerbeck. Exhibits 1 through 6, and A through D were received into evidence.

**ISSUE:**

Whether Ms. Cale's voluntary quit was for good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Misty Cale was employed by The Views Operator C, L.L.C., as a full-time cook from 2015 until July 26, 2017, when she voluntarily quit the employment. Ms. Cale quit the employment in direct response to not being selected for promotion to Activity Director. The employer notified Ms. Cale on July 25, 2017 that another employee had been selected for the Activity Director position. Ms. Cale notified her supervisor the next morning that she would not be returning to the employment.

On July 17, someone stole \$100.00 from Ms. Cale's purse. Ms. Cale's purse was stored in the office of Sarah Watson, Food Service Supervisor, at the time the money was taken from the purse. Ms. Cale reported the theft to the employer and named a suspect. The employer offered to summon law enforcement to investigate the matter. Ms. Cale rejected the suggestion. The next day, the employer learned that Ms. Cale was telling staff that a particular coworker took her money. The employer instructed Ms. Cale to cease broadcasting the allegation, since there was no proof. The employer again suggested that law enforcement should be contacted. Ms. Cale again rejected that suggestion.

In early May 2017, Ms. Cale met with outgoing Administrator, Jean Westerbeck, and asserted that the agency's chef, Todd Bogart, had been sexually harassing her through text messages. Incoming Administrator, Lisa Hanson, sat in on the meeting. Ms. Cale shared a number of text messages that she asserted indicated sexual harassment, but none of the shared messages were sexually harassing in nature. Ms. Cale had provided the text messages for the appeal hearing. See Exhibit D. The text messages reflect mutual cultivation of a personal relationship, whether that was a friendship or more than friendship, and do not reflect sexual harassment. The text messaging also strongly suggests that Ms. Cale was selling illicit drugs to Mr. Bogart. See Exhibit D at page 14, July 5, 2017, 1:20:49 p.m.

Mr. Bogart did make an inappropriate sexual comment to Ms. Cale on June 20, 2017 after roses from Ms. Cale's boyfriend were delivered to the workplace. Mr. Bogart remarked that, "There must have been a good one night stand." Ms. Cale reported the comment to Ms. Hanson and Ms. Hanson addressed the issue with Ms. Bogart. There was no similar conduct on the part of Mr. Bogart thereafter.

After Ms. Cale quit the employment, she contacted Tom Wagg, Vice President of Operations, to complain about the theft of money and being passed over for the Activity Director position. Ms. Cale made no reference during that contact to purported sexual harassment.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d 213 (Iowa 2005).

The weight of the evidence in the record establishes a voluntary quit without good cause attributable to the employer. Ms. Cale quit because the employer did not give her the Activity Director position. Ms. Cale had not claim or right to the Activity Director position and the employer did not do anything inappropriate in awarding the position to another applicant. While Ms. Cale had suffered the loss of \$100.00 on July 17, that was not the basis for her quit. The employer twice offered Ms. Cale the reasonable remedy of summoning law enforcement to address the matter. Ms. Cale rejected that remedy in both instances. The weight of the

evidence in the record fails to support Ms. Cale's assertion of ongoing sexual harassment. The text messages indicate that Ms. Cale cultivated a personal relationship with Mr. Bogart. While Mr. Bogart had uttered an inappropriate comment on June 20, 2017, the employer immediately addressed that isolated incident and no similar conduct occurred thereafter. The evidence fails to establish intolerable or detrimental working conditions that would have prompted a reasonable person to leave the employment.

Because the evidence establishes a voluntarily quit without good cause attributable to the employer, Ms. Cale is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Cale must meet all other eligibility requirements. The employer's account shall not be charged.

**DECISION:**

The August 14, 2017, reference 01, decision is affirmed. The claimant voluntarily quit the employment on July 26, 2017 without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs