

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARCI J PAULSON**  
Claimant

**APPEAL NO. 09O-UI-13372-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VAN WYK FREIGHT LINES INC**  
Employer

**OC: 05/17/09**  
**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Van Wyk Freight Lines, Inc. filed a timely appeal from a representative's decision dated June 24, 2009, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a hearing was held on July 14, 2009 and the administrative law judge issued a decision on July 15, 2009 reversing the fact-finder's decision. The administrative law judge's decision was appealed to the Employment Appeal Board. Because the recording of the hearing before the administrative law judge could not be transcribed, the matter was remanded to the Appeals Section to schedule and hold a new hearing. After due notice, a telephone conference hearing was scheduled for and held on January 12, 2010. The claimant participated personally. Participating on behalf of the claimant was her attorney, Mr. Brad McCall. Appearing as a subpoenaed witness was Ms. Patricia Nelson. The employer participated by Ms. Marcy Van Wyk, Director of Administration & Safety and Mike Kriegle, Weight Manager.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Marci Jill Paulson was employed as a full-time weight clerk for Van Wyk Freight Lines, Inc. from July 28, 2008 until May 21, 2009 when she voluntarily quit employment. Ms. Paulson worked the evening shift with three other female clerical workers. The claimant's immediate supervisor was Mike Kriegle.

Beginning in February 2009, Ms. Paulson began experiencing difficulty in working with one of the other female workers in particular, Barbara Ebert. The parties often clashed over the details of performing their work and Ms. Paulson believed that Ms. Ebert was intentionally acting, at times, to make the claimant's work more difficult. Ms. Ebert at times retained "driver's sheets" that made the claimant's work more difficult to complete as a weight clerk. Ms. Ebert also marked on bills of lading areas where she wished to draw Ms. Paulson's attention. The claimant perceived that Ms. Ebert wanted to make the claimant's work more difficult and wanted

to exert some level of authority over the claimant. The parties often had disagreements about the driver's sheets and/or markings that Ms. Ebert had made on bills of lading. Ms. Paulson complained to her supervisor, Mr. Kriegle. Mr. Kriegle intervened with Ms. Ebert's supervisor and the issues between the claimant and Ms. Ebert subsided for a time.

With time, however, the work and personality clashes between Ms. Paulson, the claimant, and Ms. Ebert resumed. The parties often engaged in argumentative behavior which included yelling and the use of inappropriate language. Ms. Paulson continued to complain to her supervisor from time to time about the ongoing issues.

On or about May 20, 2009, the company's Director of Administration & Safety, Ms. Van Wyk met with all four women who worked in the department in an attempt to clarify some of the issues and to warn all of the individuals that they must either get along or face the loss of employment. At the conclusion of the meeting, Ms. Van Wyk met with the claimant to inquire about an allegation that Ms. Ebert had made that the claimant had attempted to strike Ms. Ebert. The claimant categorically denied the allegation. When Ms. Van Wyk stated that as a personnel matter it would be placed in the claimant's file along with the claimant's denial, Ms. Paulson became upset and threatened to quit employment if the matter were included in her file. Ms. Paulson left work early that evening after notifying her supervisor.

The next work evening Ms. Paulson was again upset by Ms. Ebert's "coding" of some of the bills that normally would have been the claimant's duties. The claimant believed the intent was to make it look as if the claimant was doing a "bad job." The claimant called her supervisor, Mr. Kriegle to complain about Ms. Ebert's conduct. Mr. Kriegle personally contacted Ms. Ebert's supervisor at home so that Ms. Ebert's supervisor could take appropriate action.

After Ms. Ebert's supervisor called her at work and apparently chastised Ms. Ebert for her conduct, Ms. Ebert became angry and an exchange between the parties once again ensued, and the claimant become tearful.

Ms. Paulson reported for work on the evening of May 21. During that evening the claimant's stepson called the claimant at work and reported that Ms. Van Wyk had made some statements in the presence of the claimant's husband's ex-wife, at a tavern. The claimant's stepson reported that in response to the question about how things were going at work, Ms. Van Wyk had responded, "It sucks" and made a reference that both employees also "sucked."

As the claimant and her husband were engaged in a custody battle with Mr. Paulson's ex-wife, the claimant considered Ms. Van Wyk's statements to be inappropriate. The claimant called her supervisor and quit employment.

Ms. Paulson filed a claim for unemployment insurance benefits with an effective date of May 17, 2009 and has received unemployment insurance benefits after her separation from employment.

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

The question before the administrative law judge is whether the evidence in the record establishes good cause for quitting this employment for reasons that were attributable to the employer. It does not.

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.

871 IAC 24.25(6) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(6) The claimant left as a result of an inability to work with other employees.

Based upon the evidence in the record, the administrative law judge concludes that Ms. Paulson left her employment with Van Wyk Freight Lines, Inc. due to increasing dissatisfaction with her inability to get along with a co-worker, Barbara Ebert. The evidence in the record establishes that the claimant and Ms. Ebert had difficulty in working compatibly with each other and that Ms. Ebert at times went out of her way to be argumentative, to make the claimant's work somewhat more difficult, or to make it appear the claimant was less than competent in the performance of her duties. Ms. Paulson had gone to her immediate supervisor a number of times about the conflict between herself and Ms. Ebert. Mr. Kriegle was aware of Ms. Paulson's complaints and had made many efforts to minimize the conflicts at work.

Mr. Kriegle personally contacted Ms. Ebert's supervisor to insure that appropriate action was being taken about Ms. Paulson's complaints. The ongoing issues between the four workers and especially between the claimant and Ms. Ebert also had come to the attention of Ms. Van Wyk, the company's Director of Administration and Safety. Ms. Van Wyk took it upon herself to call a meeting with all four women who worked the evening shift and specifically warned all the individuals that they must get along at work or face the loss of employment. Ms. Van Wyk did not take a complaint from Ms. Ebert that Ms. Paulson had attempted to strike her at face value but instead personally made an inquiry with the claimant about the allegation. Ms. Van Wyk accepted the claimant's denial but indicated that the allegation would be noted in the claimant's file along with the denial. Ms. Paulson threatened to quit employment at that time, and left work early that night, but returned to work the following evening, May 21, 2009.

Ms. Paulson quit employment on the evening of May 21, 2009 after a third party informed her that Ms. Van Wyk had responded to a tavern inquiry that, in effect, that the situation at work and/or the individuals "sucked." Here, it is the claimant's position that she quit employment due to detrimental or intolerable working conditions. Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer under the provisions of 871 IAC 24.26(4). The test as to whether an individual has good cause attributable to an employer for leaving is not a subjective test, but an objective test as to whether a reasonable person would have quit under similar circumstances. See Aalbers v. Iowa Department of Job

Service, 431 N.W. 2d 330 (Iowa 1988). See also O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993).

The administrative law judge concludes based upon the evidence in the record that claimant left employment because of a conflict with another worker. They could not get along. The administrative law judge concludes that the inability of the parties to work harmoniously together did not rise to the level of intolerable working conditions. It appears that each complained about the other. The employer intervened on a number of occasions to resolve the conflict between the parties, but could not do so.

The claimant quit after being told Ms. Van Wyk had made a negative comment about both the claimant and Ms. Ebert. While Ms. Van Wyk's offhanded comment in response to a question as to how things were going at work may have been inappropriate, it was not sufficient to establish good cause for leaving employment attributable to her employer.

Although Ms. Paulson may have had good personal reasons for leaving, her reasons were not sufficient to establish that her quitting was for good cause attributable to the employer. Benefits are denied.

Because the claimant has been deemed ineligible for benefits, the benefits that the claimant has received have been determined to constitute an overpayment in unemployment insurance benefits.

**DECISION:**

The unemployment insurance decision dated June 24, 2009, reference 01, is reversed. The claimant voluntarily quit her work without good cause attributable to the employer. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, providing that she is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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