

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICKIE L SPEARS
Claimant

APPEAL NO. 07A-UI-02753-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

METZ BAKING CO
Employer

**OC: 02/04/07 R: 02
Claimant: Respondent (5)**

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Metz Baking Company (employer) appealed a representative's March 6, 2007 decision (reference 01) that concluded Vickie L. Spears (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 4, 2007. The claimant participated in the hearing. Dave Lein appeared on the employer's behalf and presented testimony from one other witness, Kevin Wheaton. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on November 14, 2005. She worked part time as a retail clerk in the employer's bakery outlet store. Since approximately January 1, 2007, at her request, her schedule was reduced from approximately 22 hours per week to 9 hours per week, working only Saturdays, due to her school schedule. Her last day of work was February 3, 2007. On January 20, 2007, she sent her notice of resignation by fax to Mr. Lein, the employer's zone human resources manager. She indicated that she had several concerns regarding the store being operated against company policy. Mr. Lein was unsuccessful in making contact with her until about February 14; it does not appear that he attempted to contact her at the store during the times he would have known she was working at the store on January 20, January 27, or February 3.

The claimant had been trained that food was to be removed from the shelves and thrown away immediately upon reaching the expiration date. After a new store manager began working at the store in mid-January, the claimant discovered there were several items that were being kept on the shelves past their expiration dates, sometimes even as long as a week. Mr. Wheaton, the area retail sales manager, acknowledged that he had instructed the new store manager that

products need not be removed from the shelves immediately upon reaching the expiration date, but would be good for at least several days thereafter. However, there was no specific guideline given as to how much longer after the expiration date the products could be kept on the shelves before they should be removed. There had been some honey offered for sale in the store which had crystallized and the supplier had distributed a memo, which posted in the store that the honey should simply be thrown out. The claimant had actually pulled the honey from the shelves. However, Mr. Wheaton instructed the new store manager that the honey should be returned to the shelf and marked down. The honey was actually still safe to sell and the crystallizing could be removed by heating the honey, but this explanation was not provided to the claimant and the memo suggesting disposing of the honey was left up in the store.

The claimant did not feel comfortable contacting Mr. Wheaton, as he had made some at least joking comments to the claimant in the early fall of 2006 suggesting that women did not need to pursue a college education.

The administrative law judge takes administrative notice that another representative's decision was issued on March 9, 2007, as reference 04, which allowed the claimant department approved training (DAT) status from February 4 through May 5, 2007.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for 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.

871 IAC 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.

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). The claimant has demonstrated that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. EAB, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). While the claimant may in fact have been incorrect in her conclusion that the change to allowing products to remain on the shelves was unsafe and contrary to the employer's interests and policies, a reasonable person could easily have come to the same conclusion. O'Brien, supra.

Further, the claimant's January 20, 2007 notice to the employer gave the employer a sufficient length of time in which if it had chosen to try to prevent the claimant from leaving it could have at

least gotten the details on the claimant's concerns so that it could have corrected any misconceptions she may have had. Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005); Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa 1996); Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). Since the employer failed to take effective action to even learn those details so as to address or resolve the problem, it made the cause for quitting "attributable to the employer." Benefits are allowed.

An issue as to whether the claimant's availability was and is at least the same as it was during the accrual of her base period wage credits arose as a result of the hearing. This could result in the claimant being ineligible for unemployment insurance benefits as not being available for work "on the same basis on which the individual's wage credits were earned." 871 IAC 24.22(2)a. However, as a result of the representative's March 9, 2007 (reference 04) decision granting DAT, the availability issue is now moot. Iowa Code § 96.4-6; 871 IAC 24.39. A further result of the DAT is that during the time the claimant is authorized for DAT, which can be extended, the employer's account is exempt from charge. Iowa Code § 96.4-6-a.

DECISION:

The representative's March 6, 2007 decision (reference 01) is affirmed as modified with no effect on the parties. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer is currently exempt from charge due to the claimant's DAT qualification.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw