

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GILBERT, NICHOLLE, K
Claimant

APPEAL NO. 12A-UI-10301-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 07/22/12
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Nicholle Gilbert filed a timely appeal from the August 14, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 20, 2012. Ms. Gilbert participated and presented additional testimony through Teri Adams and Jody Little. Kathy Faust represented the employer. Exhibit A was received into evidence.

ISSUE:

Whether Ms. Gilbert'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: Nicholle Gilbert was employed by Casey's in Dubuque from June 2011 until July 20, 2012, when she voluntarily quit. From March 2012 until the quit, Ms. Gilbert was the full-time First Assistant Manager. From July 2011 until March 2012, Ms. Gilbert had been the full-time Second Assistant Manager. Kathy Faust was the Store Manager throughout Ms. Gilbert's employment. Mary Hanrahan was the area supervisor over Ms. Faust and Ms. Gilbert. It was Ms. Hanrahan who had hired Ms. Gilbert and twice promoted Ms. Gilbert.

On July 20, 2012, Ms. Faust was preparing to start a scheduled vacation and Ms. Hanrahan was at the Dubuque store. Ms. Gilbert was scheduled to work from 8:00 a.m. to 4:00 p.m. Shortly after Ms. Gilbert arrived, Ms. Faust directed Ms. Gilbert to start preparing the store inventory order. Ms. Faust had shown Ms. Gilbert one time before how to perform the store order. Ms. Faust had previously scheduled additional training for Ms. Gilbert on performing the store order, but Ms. Gilbert had been absent due to illness on those dates. At the time Ms. Faust directed Ms. Gilbert to start preparing the store order on July 20, Ms. Faust made a comment to the effect that Ms. Gilbert should already know how to perform the order. Ms. Gilbert interpreted the comment as demeaning. Ms. Faust indicated that she would follow up with Ms. Gilbert later to assist with completing the order. The conversation between Ms. Faust and Ms. Gilbert took place at the front of the store near the cash register. Ms. Hanrahan was nearby straightening a shelf. Ms. Faust had not raised her voice, had not used profanity, and had not uttered anything intended to be demeaning. Shortly thereafter,

Ms. Gilbert walked off the job without notice. When Ms. Faust realized that Ms. Gilbert was gone from the store, she checked outside and discovered that Ms. Gilbert's car was gone. Ms. Faust returned inside the store and found Ms. Gilbert's purse was also gone and that Ms. Gilbert's keys to the store were sitting on the counter. Ms. Gilbert had intended to quit and did not make further contact with the employer.

Ms. Gilbert had multiple health issues during the employment, which she attributes to a difficult relationship with Ms. Faust. The health issues included hypertension and anxiety. Ms. Gilbert did not provide any medical documentation to the employer indicating that her health issues were work related and has not provided any such documentation for the appeal hearing. A doctor did not recommend that Ms. Gilbert leave the employment. Ms. Gilbert did not provide the employer with any medical documentation indicating a need for accommodations in the employment.

On July 15, Ms. Gilbert had been scheduled to work and to perform bookkeeping duties. Ms. Faust was out of town. Ms. Gilbert contacted Ms. Faust in the middle of the night and said she had been to the doctor, had a doctor's excuse, and was unable to open the store. Ms. Faust told Ms. Gilbert that there was not much she could do since she was out of town. Ms. Faust told Ms. Gilbert that she would at least need to unlock the store, prepare the cash drawer, and call someone in to cover her shift. Ms. Gilbert did as directed and was able to get another employee to come in and work most of her shift.

Ms. Faust had a reputation for being a blunt, hard-working manager who expected similar effort from the store's other employees. In November 2011, Ms. Gilbert was assisting with unloading a freight truck and stopped to converse with a friend. Ms. Faust directed Ms. Gilbert to get back to work. A couple months before Ms. Gilbert quit, she had given two-weeks' notice to Ms. Faust that she intended to quit because she did not like the way Ms. Faust spoke to her. Ms. Faust agreed to work on the relationship. In mid June 2012, a patron complained to the Casey's corporate office that he had stopped in the store and heard the store manager arguing with another employee. The incident had been between Ms. Faust and Ms. Gilbert and both had been reprimanded by Ms. Hanrahan for the incident in light of the customer complaint.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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 (Iowa 2005).

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.

When a worker voluntarily quits due to a personality conflict with a supervisor or voluntarily quits rather than perform work as directed, the quit is presumed to be without good cause attributable to the employer. See Iowa Admin. Code section 871 IAC 24.25(22) and (27).

The weight of the evidence in the record fails to establish a voluntary quit for good cause attributable to the employer. The weight of the evidence indicates that Ms. Gilbert overreacted to the situation on July 20. The evidence fails to establish that Ms. Faust did anything inappropriate on that day. The evidence fails to establish that Ms. Faust did anything to offend or demean Ms. Gilbert on that day. The evidence fails to establish that Ms. Faust placed any unreasonable expectation on Ms. Gilbert that day. In light of the reprimands that had recently been issued to both Ms. Gilbert and Ms. Faust, and in light of Ms. Hanrahan's near proximity to

the discussion on July 20, a reasonable person would expect that if anything inappropriate had taken place, Ms. Hanrahan would have inserted herself into the situation. The fact that Ms. Hanrahan was nearby and took no action supports the conclusion that nothing inappropriate had taken place. It was not unreasonable for Ms. Faust to expect her First Assistant Manager to put forth the appropriate effort to master duties the First Assistant Manager would have to perform while Ms. Faust was away. Ms. Gilbert accepted that challenge and others when she accepted the position of First Assistant Manager. Ms. Gilbert left on July 20 because she did not want to perform the work assigned to her.

Amongst the other responsibilities that Ms. Gilbert accepted as an assistant manager was the responsibility to behave as a member of management when she was left in charge of the store during Ms. Faust's absence. It was not unreasonable for Ms. Faust to expect that Ms. Gilbert would take reasonable steps to at least get the store opened on July 15. The evidence fails to establish, despite Ms. Gilbert's hypertension and anxiety issues, but this was beyond Ms. Gilbert's capabilities on July 15. That conclusion is supported by the fact that Ms. Gilbert demonstrated the ability to do those things on July 15. It was unreasonable for Ms. Gilbert to act as if she was a rank-and-file employee on July 15 and could just dump her managerial responsibilities on the store manager while the store manager was out of town.

While the evidence establishes that Ms. Faust may have been a demanding supervisor, the evidence does not support the assertion that she abused or otherwise mistreated Ms. Gilbert or anyone else. Ms. Gilbert was unable to provide dates and details of alleged mistreatment. Instead, Ms. Gilbert made general allegations that boil down to her having a personality conflict with her supervisor. Ms. Faust's act of reminding Ms. Gilbert of the employer's attendance policy at the time of absences was not inappropriate. The evidence does not establish intolerable or detrimental working conditions.

The evidence does not support Ms. Gilbert's assertion that she had to leave the employment for medical reasons. Ms. Gilbert has presented no credible evidence to establish a causal relationship between the employment and her health issues. Ms. Gilbert presented no medical documentation to suggest a causal connection or to suggest it was necessary for her to leave the employment for health reasons. A doctor did not recommend that Ms. Gilbert leave the employment.

For the reasons referenced above, the administrative law judge concludes that Ms. Gilbert voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Gilbert is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Gilbert.

DECISION:

The Agency representative's August 14, 2012, reference 01, decision is affirmed. The claimant voluntarily quit the employment 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, provided she is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs