

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TRACY J DAVIS
530 – 5TH ST
BOONE IA 50036

MOORMAN ENTERPRISES INC
56780 – 241ST ST #2
PO BOX 1939
AMES IA 50010-1939

Appeal Number: 04A-UI-11650-CT
OC: 10/03/04 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Tracy Davis filed an appeal from a representative's decision dated October 20, 2004, reference 01, which denied benefits based on her separation from Moorman Enterprises, Inc. (Moorman). After due notice was issued, a hearing was held by telephone on November 22, 2004. Ms. Davis participated personally and offered additional testimony from Shelly Dickerson and Gwen Bartmess. The employer participated by Patti Moorman, Vice President, and Matt Moorman, President. The hearing was recessed on November 22 and completed on November 23, 2004.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Davis worked for Moorman from December 18, 2002 until September 30, 2004. She worked full time cleaning up after fire damage to homes and other buildings. On the morning of September 30, she telephoned Patti Moorman regarding some keys. Ms. Moorman knew from her caller-id that it was Ms. Davis and answered the telephone by saying "what, can't I fucking get any sleep?" Ms. Davis was upset by the comment because she felt she had been snapped at for no reason. She walked off the job several hours later.

Ms. Davis quit her employment because she felt she was being blamed for missing equipment. On one occasion, Matt Moorman had suggested that the workers had left a vacuum at a job site and, on another occasion, suggested that the workers had left a backpack at a job site. Approximately two weeks before Ms. Davis' separation, Mr. Moorman suggested that the workers must have left the air scrubber at a job site. He did not directly accuse Ms. Davis of having left the items and he did not voice his opinion in an angry tone of voice. Ms. Davis also quit because she did not feel the employer provided sufficient protection against the chemicals she used and some of the work she performed. The necessary safety equipment is available in each van the employer operates. Material safety data sheets were not available for all of the chemicals used when Ms. Davis first began the employment but were available by at least July of 2003.

Ms. Davis also quit because of the level of gossip in the workplace. However, she also participated in gossiping. She is a cousin to Patti Moorman and other relatives of the employer also worked in the business. There were occasions on which family issues were brought into the workplace by both the employer as well as the workers. There were occasions on which employees of Moorman were not able to cash their paychecks at the employer's bank. This occurred because the funds deposited to cover payroll had not been in the bank a sufficient amount of time to be made available. The funds were in the bank, just not available to be paid out.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Davis was separated from employment for any disqualifying reason. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. Davis had the burden of proving that her quit was for good cause attributable to the employer. Iowa Code section 96.6(2). Her quit was prompted by the manner in which Ms. Moorman answered the telephone on September 30, 2004. Although it was not the most congenial response with which to answer the telephone, it was not so outrageous as to constitute good cause for quitting. Moreover, the administrative law judge is not persuaded that it caused Ms. Davis to quit. The call was at 9:45 a.m. but she did not quit until approximately 3:00 p.m.

It appears that the matters which Ms. Davis cited as the basis for her quit were matters that had occurred sometime in the past. Although data sheets concerning chemicals had not initially been made available, they had been available for the last year of the employment. Ms. Davis continued in the employment in spite of not having data sheets. She also continued in the employment even though at one point she had to work in a home that did not have heat or hot water. She also continued the employment in spite of the fact that drug paraphernalia and used

needles were found in a home and she did not feel the employer provided her adequate training on how to deal with such situations. Ms. Davis condoned whatever deficiencies existed in her employment by remaining in the employment.

Ms. Davis contended that the employer did not provide appropriate protective clothing for various jobs. The administrative law judge is satisfied that such equipment is, in fact, available in the vans the employees use. Although Ms. Davis complained about the gossiping which occurred at work, she was also a willing participant in some of the gossip. The issue regarding paychecks was due to the bank's procedures and not something the employer had control over. None of the paychecks were ever dishonored if they were deposited rather than just presented for cash.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Ms. Davis has failed to establish that she had good cause attributable to the employer for quitting. There was no current act on the part of the employer which would justify a finding of good cause attributable to the employer for quitting. The past acts complained of were condoned by continued employment. For the reasons stated herein, benefits are denied.

DECISION:

The representative's decision dated October 20, 2004, reference 01, is hereby affirmed. Ms. Davis voluntarily quit her employment for no good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/kjf