

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAM I LANKEN

Claimant

APPEAL NO. 10A-UI-00520-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MATHSON, RICHARD GOLDEN ARCH-IA
RACCOON VLY PTSP – MCDONALD'S
REST**

Employer

OC: 12/06/09

Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Pam Lanken filed a timely appeal from the January 7, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 18, 2010. Ms. Lanken participated. Jeff Fournier, Store Manager, represented the employer.

ISSUE:

Whether the claimant'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: Pam Lanken worked for the employer at the employer's West Des Moines McDonald's Restaurant as a full-time swing shift manager from May 7, 2009 until November 28, 2009. Ms. Lanken had previously worked for the employer at the same location from May to October 2008. Ms. Lanken's immediate supervisor was Jeff Fournier, Store Manager. Jerry Reed was a swing shift manager who had been with the employer for a decade. During Ms. Lanken's most recent period of employment, Mr. Reed engaged in a pattern of sexually harassing Ms. Lanken. Ms. Lanken made multiple complaints to various management staff. Eventually, Mr. Fournier spoke to Mr. Reed about the conduct. Mr. Reed contacted Ms. Lanken directly, indicated Mr. Fournier had spoken to him, told Ms. Lanken that a human resources representative would be contacting her, and asked Ms. Lanken to tell that person the matter had been resolved and needed to go no further. Despite Ms. Lanken's multiple complaints to various management staff, the call from the perpetrator was the only response Ms. Lanken received. Mr. Reed later continued the sexual harassing comments. Ms. Lanken made requests for a transfer to one of the employer's other restaurants, but Mr. Fournier told Ms. Lanken there would be no transfer and that she needed to get along with Mr. Fournier. Ms. Lanken looked for a position with another McDonald's restaurant and thought she had secured an offer. The current employer had required that Ms. Lanken execute a non-compete agreement that gave the employer veto power over Ms. Lanken going to work for another McDonald's franchise.

In November, Mr. Fournier indicated he was not satisfied with Ms. Lanken's performance. The employer had received a couple customer complaints for which Mr. Fournier held Ms. Lanken responsible. Ms. Lanken had not been working or at the restaurant at the time at issue in one of the complaints. A coworker had been present and had observed the second incident and was able to support Ms. Lanken's handling of that matter. Ms. Lanken felt she was in a precarious position with the employer and was at risk of being discharged over a small event.

On November 28, Mr. Fournier issued a verbal reprimand. Ms. Lanken responded by saying that she was giving her two weeks' notice of her quit. Ms. Lanken thought she had secured another position. Once Ms. Lanken gave her two weeks' notice, Mr. Fournier took her off the schedule and ended the employment. The employer also made it impossible for Ms. Lanken to go to work for the new employer by refusing to grant her a release from the non-compete arrangement.

REASONING AND CONCLUSIONS OF LAW:

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.

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 an employee gives notice of intent to resign at a future date, it is a quit issue on that future date. Should the employer terminate the employee immediately, such employee shall be eligible for benefits for the period between the actual separation and the future quit date given by the claimant. See 871 IAC 24.26(12).

Where a person voluntarily quits in response to a reprimand, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(28).

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).

The weight of the evidence in the record establishes that Ms. Lanken voluntarily quit the employment in response to being sexually harassed by a more senior coworker and in response to the employer's inadequate response to her concerns, which included a refusal to allow Ms. Lanken to transfer to another store. Though Ms. Lanken gave her quit notice at the time Mr. Fournier was issuing a verbal reprimand, the weight of the evidence indicates that the quit

was minimally based on that interaction and was primarily based on the sexual harassment. The sexual harassment, coupled with the employer's sorry response, created intolerable and detrimental working conditions that would have prompted a reasonable person in Ms. Lanken's position to leave the employment.

Ms. Lanken's voluntary quit was for good cause attributable to the employer. The employer ended the employment on November 28, 2009 in response to Ms. Lanken's notice that she intended to leave. Ms. Lanken is eligible for benefits effective the December 6, 2009 effective date of her claim, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Lanken.

DECISION:

The Agency representative's January 7, 2010, reference 01, decision is reversed. The claimant voluntarily quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css