

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

AUDREY A MITCHELL
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Appeal Number: 05A-UI-03884-SWT
OC: 03/20/05 R: 02
Claimant: Appellant (2)

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:

The claimant appealed an unemployment insurance decision dated April 6, 2005, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on May 3, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Barry Kaplan, attorney at law. No one participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked part time for the employer as a pizza maker in the Italian Express department from October 23, 2001, to March 17, 2005. Her supervisor was Bruce Brown. During the last three or four months of the claimant's employment, Ric Anderson was the store manager.

On March 17, 2004, Anderson approached the claimant and asked where Brown was because he wanted to talk to him. The claimant told Anderson that Brown was not in the store at that time. Anderson told the claimant to give Brown a message to contact Anderson when he got to the store. The claimant did exactly what she was told and conveyed the message to Brown when he got to work. Brown, however, did not immediately contact Anderson after getting the message from the claimant.

A short time later, Anderson approached the claimant in front of customers and other employees. He was carrying a portable power drill with a drill bit in it when he confronted the claimant. He angrily accused her of not giving Brown the message that Anderson wanted to see him, which was a false accusation. She tried telling Anderson that she had given Brown the message, but Anderson would not listen. On two occasions, Anderson raised the drill and pointed it toward the claimant's chest and turned it on in a menacing fashion, which frightened and intimidated the claimant. Finally, the claimant told Anderson that she would go tell Brown again and left. A short time later, the claimant submitted a written letter of resignation because Brown had created intolerable working conditions by humiliating and intimidating the claimant in front of customers and employees.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

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 24.26(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.

The evidence establishes that the claimant voluntarily quit employment due to intolerable and detrimental working condition. Ordinarily, employees are required to make efforts to correct intolerable working conditions before leaving employment. In this case, Anderson's conduct was so flagrant and in violation of the standards of civil behavior that the claimant had the right to expect of a manager that she had established she quit with good cause attributable to the employer.

DECISION:

The unemployment insurance decision dated April 6, 2005, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/pjs