

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JODI STEFFES**

Claimant

**APPEAL NO: 16A-UI-07871-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KMJ ENTERPRISES LLC**

Employer

**OC: 06/19/16**

**Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 11, 2016, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on August 4, 2016. The claimant participated in the hearing with Attorney Stuart Higgins. Anthony Hofbauer, Owner, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time office assistant for KMJ Enterprises from June 26, 2013 to June 22, 2016. She voluntarily left her employment because she was being sexually harassed by another employee.

On June 14, 2016, the claimant informed Office Manager Nathan Weig she was going to submit her resignation notice because she had been sexually harassed by Returns Manager Terry Hubby and she decided she could no longer work with him. While the situation had been going on for approximately three years, this was the first time the claimant reported the situation to Mr. Weig or anyone else. Mr. Weig asked the claimant if she would be willing to stay if he or Owner Anthony Hofbauer were able to take care of the situation and the claimant stated she would consider it but needed to discuss the matter with her husband first. Mr. Weig told the claimant he was going to call Mr. Hubby in for a meeting and suggested the claimant leave before that time. After thinking about the situation overnight, the claimant told Mr. Weig she was rescinding her two week notice.

In March 2016, the claimant was moved to the front office from the Returns Department to cover for an employee who was gone. She still worked in the Returns Department with Mr. Hubby approximately two days per week. When the claimant was in the Returns Department

Mr. Hubby made several disturbing comments to her including one day when the claimant was aggravated and Mr. Hubby stated, "You just come over to my house after work and I'll make all your problems go away. Another time the claimant was popping her neck and he said, "Come here and let me massage that neck and I will make you melt." During the last week of May 2016 the claimant was walking through the Return Department when Mr. Hubby grabbed the inside of her thigh, "almost between (her) legs." The claimant stated she quickly moved away from Mr. Hubby and said, "I don't think so." She was in shock and retreated to her desk. On June 13, 2016, the claimant was walking through the Returns Department when Mr. Hubby grabbed her left arm and said, "Come here. Let me put a big old smile on your face for you." The claimant walked away and went outside and called her husband. He told her to report Mr. Hubby's behavior immediately but the claimant waited until the following day to do so. The claimant explained the reason she had not reported Mr. Hubby's behavior prior to June 14, 2016, was because she did not want to appear as someone who could not take a joke or that other employees had to be careful around. The claimant notified Mr. Weig of the situation and he told her he would remove her from the Returns Department for two weeks but she would still have to work in the Returns area at least two days per week. The claimant was hoping she would be allowed to do her Returns Department work in the office in the front but the employer would not allow her to do so.

June 21, 2016, was the claimant's first day back in Returns with Mr. Hubby after he received the warning about his behavior but the shipping manager was in that area and consequently the claimant felt comfortable. On June 22, 2016, the claimant was working alone with Mr. Hubby and she was very uncomfortable. Mr. Hubby repeatedly asked the claimant if she knew who "turned him in" and if she knew what he did wrong. The claimant "played dumb" and did not answer his questions. The claimant called her husband at lunch time and told him what was happening and he encouraged her to stick it out for the rest of the day. That evening the claimant wrote an email to Mr. Hofbauer stating she did not know if she would be in the next day as she was "very worked up and upset at a few things." She indicated she spoke with Mr. Weig but felt he did not have time to adequately handle her concerns. She asked about another position and moving out of Returns. She told him that if she knew she would have to go back to returns when she moved to the office in March 2016 she would have notified the employer of the issues regarding Mr. Hubby sooner and started looking for a different job. She discussed the fact that the day after reporting the situation involving Mr. Hubby to Mr. Weig she was told she was going to have to continue working with Mr. Hubby. Mr. Hofbauer did not respond to her email that evening because he did not receive it.

The claimant did not report for work June 23, 2016. Mr. Weig contacted the claimant at 9:30 a.m. to ask where she was. The claimant stated she emailed Mr. Hofbauer the night before and Mr. Weig asked her to explain what the email was about. The claimant told him and stressed she would be happy to work in a different department away from Mr. Hubby or at the employer's new Ames facility. Mr. Weig asked the claimant several times if she was quitting and finally the claimant said, "Yes Nathan. If you are telling me I need to work in Returns I will have to quit." Mr. Weig stated he would talk to Mr. Hofbauer and get back to her that day. Approximately ten minutes later the claimant received a text message from Mr. Weig telling her Mr. Hofbauer did not receive her email and asking her to resend it. The claimant did so and when she did not hear from the employer by 6:15 p.m. she sent another email with her resignation letter attached. Mr. Hofbauer sent the claimant an email at 7:16 p.m. and stated he was taking his time in responding because he wanted to give careful consideration to her concerns before doing so. He stated he was sorry the claimant felt she had to resign and indicated the employer did move the claimant from Returns to the office because of another employee's absence and he was unaware of any issues on the part of the claimant prior to the email. He expressed concern that the claimant could not make a commitment to the office job

because she had accumulated some absences while in that department. The claimant explained that she did miss some work when she had kidney stones and she missed one day due to a migraine and one other day due to her uncle's funeral. At the end of the parties email conversations the claimant's resignation stood.

### **REASONING AND CONCLUSIONS OF LAW:**

For the following reasons the administrative law judge concludes the claimant voluntarily left her employment with 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.

Iowa Admin. Code r. 871-24.26(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.

Generally notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

The law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 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 claimant notified the employer of her issues with Mr. Hubby and her intention to quit if those concerns were not addressed. The claimant subsequently quit due to those conditions. Under these circumstances, the administrative law judge concludes the claimant has demonstrated that she was sexually harassed by Mr. Hubby and while the employer talked to Mr. Hubby it did not take adequate steps to address the claimant's concerns or alleviate her fears. Consequently, benefits must be allowed.

**DECISION:**

The representative's decision dated July 11, 2016, reference 01, is reversed. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs