

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

ANGELA J RIOS
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J R PAINTING & DECORATING INC
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Appeal Number: 04A-UI-03556-SWT
OC 02/29/04 R 03
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 March 25, 2004, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on April 22, 2003. The parties were properly notified about the hearing. The claimant participated in the hearing. Michelle Biderman participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time for the employer as an office assistant from July 6, 1998 to March 5, 2004. Michelle Biderman was the claimant's immediate supervisor. John Rios is the president of the company and is the claimant's uncle and Biderman's father.

During the course of the claimant's employment, John Rios regularly criticized the claimant and yelled and swore at her about matters for which she was not at fault and over which she had no control. The claimant felt stress and anxiety while at work. She considered Rios' conduct to be abusive. She told Rios that she was thinking about quitting her job because of his abusive treatment. The situation would improve for a while but then revert to the same stressful working conditions.

On March 4, 2004, the claimant was working on programming the cell phones for the employees. She left a note for Rios because she could not locate a charger for one of the cell phones. The next day when Rios arrived at work, he got into a loud argument with Biderman. He then questioned the claimant about the note she had left. When she explained that she could not find one of the chargers, Rios began yelling, "Call Nextel and tell them they shorted us a charger." The claimant tried to tell Rios that they might want to look around first, but Rios interrupted her and again yelled, "I said call Nextel and tell them they shorted us a charger." Biderman then came out, and the claimant said she might have missed one of the chargers. Rios slammed his fist on his desk and screamed at the claimant: "I told you to call Nextel and order a new god dam charger." The claimant then told Rios that she could not take it anymore and that he could not talk to her like that. Rios replied, "You know what?" and then waved his hand and say "Bye." The claimant decided that meant she was discharged and left work. Rios, however, did not intend to discharge the claimant but only to send her home for the day.

About ten minutes after the claimant left, Biderman called her and said if she wanted to come back to work she could. She told the claimant that she and Rios "had it out" and she had found the charger. The claimant told Biderman that she did not think she could return to work because it was too mentally and emotionally draining. Biderman said okay. The claimant voluntarily quit employment due to intolerable or detrimental working conditions.

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 Iowa Supreme Court in Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993), established conditions that must be met to prove a quit was with good cause when an employee quits due to intolerable working conditions or a substantial change in the contract of hire. First,

the claimant must notify the employer of the unacceptable condition or change. Second, the claimant must notify the employer that she intends to quit if the condition or change is not corrected.

The evidence establishes the claimant quit due to intolerable working conditions. The employer's conduct showed a disregard of the standards of civil conduct an employee has the right to expect of an employer. The claimant has satisfied the conditions set forth in the Cobb case. She quit for good cause attributable to the employer.

DECISION:

The unemployment insurance decision dated March 25, 2004, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/kjf