

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY A CARR-IRVIN
Claimant

APPEAL NO. 09A-UI-05755-H

**ADMINISTRATIVE LAW JUDGE
DECISION**

CREATIVE VISIONS INC
Employer

**Original Claim: 03/15/09
Claimant: Appellant (1)**

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, Kimberly Carr-Irvin, filed an appeal from a decision dated April 3, 2009, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, on May 19, 2009. The claimant participated on her own behalf, with witness Michael Garrison and was represented by Jessica Bromley. The employer, Creative Visions, participated by CEO Ako Abdul-Samod, Executive Assistant Dawn Thomas, Job Developer Jennifer Bellolio, CFO Brenda Cox, Counselor Michael Mils, and Receptionist Johnanna Law

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Kimberly Carr-Irvin was employed by Creative Visions from August 2006 until January 23, 2009 as a full-time Chief Operating Officer. She had given a resignation in October 2008 that she told CEO Ako Abdul-Samod was due to some health problems. They discussed the matter and she rescinded the resignation, which the employer accepted.

On January 13, 2009, Ms. Carr-Irvin again gave a written resignation to the CEO and it was accepted. The only reason she gave again was her medical condition. Mr. Abdul-Samod discussed the resignation with his administrative staff and stated he would not accept any rescinding of that resignation. Two days later, Ms. Carr-Irvin tried to rescind the resignation but the CEO did not agree. February 13, 2009, was to be her last day of work.

On January 22, 2009, the office was extremely busy. Proposals were due, the staff was attempting to reconcile approximately \$40,000.00 in billing problems, and CEO Abdul-Samod was going to the state capitol for meetings. The claimant alleged another employee, Wally Fadre, had come into her office around 3:15 p.m., shut the door, put his finger on her nose and told her he was not going to listen to her directives anymore. She stood up and left the office immediately, ordering him to go home. When she checked later with Executive Assistant Dawn Thomas, she was told Wally was to stay per CEO Abdul-Samod, as both of them were needed

to get the projects done. Wally had complained about Ms. Carr-Irvin, stating she had “yelled” and “swore” at him in her office.

The claimant spoke with the CEO as he was leaving to return to the capitol building around 5:00 p.m. and he said both of them would have to stay because of the project that had to be finished that day, and he would “look into it.” Both Ms. Carr-Irvin and Wally stayed until past 1:00 a.m. to complete the project.

Ms. Carr-Irvin’s next day of work was to be Sunday, January 25, 2009. She was no-call/no-show on that day, and did not return to work after that, and did not notify the employer of the reason for her absence. She had decided to quit before her scheduled last day of February 13, 2009, because of the incident with Wally.

The CEO did intend to sit down with both Wally and the claimant, as their stories about what happened in Ms. Carr-Irvin’s office on January 22, 2009, differed greatly. But, since the claimant did not return to work, and Wally was discharged January 25, 2009, for other reasons, the issue was never resolved.

Ms. Carr-Irvin stated other reasons she quit were due to the “hostile” work environment created by Wally. She did not get along with Wally and stated she feared for her safety because he had a “criminal history.” The entire office was aware of Wally’s criminal history but did not feel threatened by him, although one or two of the employer’s witnesses stated they were afraid of Ms. Carr-Irvin because of her behavior. In addition, the claimant never expressed to anyone she was in fear for her safety with Wally working in the office.

The claimant also pointed to other incidents she declared to constitute a hostile work environment. In September 2008, there was a training experiment conducted by the CEO where all the staff attended a meeting and everyone was to write down what they liked and disliked about their jobs, what they could do to improve, and what they liked and disliked about the job other staff members were doing, and what they could do to improve all around. Ms. Carr-Irvin felt it was intimidating, although other staff members found it productive and informative. No one was singled out in this staff building exercise.

The claimant also found it inappropriate when CEO Abdul-Samod called a staff meeting about the lack of documentation in the client files. The employer could possibly have faced penalties for lack of documentation and he was trying to emphasize the importance of documenting everything. He spit into a cup and told the entire staff, “If you see any client so much as spit, I want it documented.”

The allegation was made that the CEO, at a staff meeting, publicly discussed the fact the claimant had sought psychiatric care after the death of her father, but this was denied. He had discussed how he felt upon the loss of his son, and other staff members shared several of their feelings while discussing a book called The Four Agreements.

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.

871 IAC 24.25(4), (6), and (21) provide:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

(6) The claimant left as a result of an inability to work with other employees.

(21) The claimant left because of dissatisfaction with the work environment.

The claimant quit by being no-call/no-show to work for three days. This in and of itself is a voluntary quit without good cause attributable to the employer and would disqualify her from receiving benefits. In addition, she had already submitted a resignation effective February 13, 2009, before any of the incidents of January 22, 2009, occurred. She had cited medical reasons at that time but denied at the hearing she had any medical problems that would have interfered with her ability to work.

But to review the other allegations, it is evident the claimant did not care to work with some of the other people in the office. She herself was a source of intimidation and dissension with other employees. Her allegations of a hostile work environment because of Wally and the CEO's managerial style are not supported by the record. Other employees had no problem with either Wally or the CEO's "staff building" techniques.

The allegation against Wally was reported to the CEO as he was leaving the office for a very important meeting, while the rest of the office was working under a deadline to complete a very important project, which required everyone to stay. The CEO had received different stories about what had happened from the two people involved and did not have time to investigate it as he was walking out the door. The claimant refused to return to work so he could sit down with both her and Wally to investigate further what had happened and to try to resolve it.

The claimant cited *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005), for the proposition she did not have to inform the employer she would quit because of the hostile work environment. While this is correct, she was still obliged to notify the employer of the problem prior to quitting. In order for good cause attributable to the employer to exist, a claimant with grievances must make some effort to give the employer an opportunity to work out whatever problem led to the grievance. By not giving notice to the employer of the circumstances causing the decision to quit employment, the claimant failed to give the employer an opportunity to make adjustments that would alleviate the need to quit. *Denby v. Board of Review*, 567 P.2d 626 (Utah 1977). Ms. Carr-Irvin refused to return to work after making the complaint and the employer did not have the opportunity to investigate and interview the parties to resolve the problem. In addition, it is noted the claimant had already tendered her resignation for unrelated reasons more than a week prior to January 22, 2009.

“Good cause” for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Florida App. 1973). 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). It appears the claimant was “overly sensitive,” and what she perceived as hostility and inappropriate managerial style are not substantiated from an objective point of view. This is based on the testimony of other witnesses who worked in the same office under the same conditions, in the same environment, who found nothing intolerable or detrimental about the situation.

The administrative law judge also notes the claimant, without prior notice to the judge or the employer, requested Dawn Thomas as a hostile witness. This was allowed. She proceeded to question the witness as to her personal relationship with CEO Abdul-Samod, asserting this was necessary to impugn Ms. Thomas’s credibility. After the questions were asked, the claimant failed to make any statement regarding the relevance of the questions to the issue of credibility, or how the answers would negatively affect the weight to be given to Ms. Thomas’s earlier testimony. The administrative law judge finds there was nothing established to call this witness’s credibility into question.

DECISION:

The representative’s decision of April 3, 2009, reference 01, is affirmed. Kimberly Carr-Irvin is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw