

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

CYNTHIA TIMMERMAN  
704 - 5<sup>TH</sup> ST S LOT 23  
HUMBOLDT IA 50548

BROADWAY INN INC  
PO BOX 51  
812 - 13<sup>TH</sup> ST N  
HUMBOLDT IA 50548-0051

Appeal Number: 06A-UI-01394-B  
OC: 01/01/06 R: 01  
Claimant: Respondent (1)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Broadway Inn, Inc. (employer) appealed an unemployment insurance decision dated January 27, 2006, reference 01, which held that Cynthia Timmerman (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Ft. Dodge, Iowa, on March 16, 2006. The claimant participated in the hearing with her son, Josh Stubbs. The employer participated through owners Doug and Myrna Marso.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant briefly worked for the employer in 2004 but was most recently employed from March 12, 2005 through December 13, 2005. She worked as a desk clerk and housekeeper with varied work hours. At one point, the claimant worked 123 consecutive days without a day off work. She voluntarily quit her employment on December 13, 2005 after being confronted by owner Doug Marso.

When the claimant cleaned, she did an excellent job but she was not a "morning person" and complained a lot in the mornings. The claimant and owner Myrna Marso became good friends and confided in each other. Ms. Marso appeared to be extra sensitive and testified that it really bothers her if anyone is mad at her. The claimant was not happy on the morning of December 13, 2005 because she was called in to work for another maid and was quite vocal about her feelings. Her complaints upset Ms. Marso and Mr. Marso noticed she was upset when he arrived at the hotel. He asked her why she was upset and she explained that the claimant was in a foul mood that morning. Ms. Marso reported that the claimant said to the other maid, "Why the fuck did she call me in for just eight rooms?"

Mr. Marso approached the claimant and stated, "Cindy, what the hell is your fucking problem?" The claimant reported that he was so close "his spit was hitting me in the face." She said, "I have no problem" and he repeated, "What is your fucking problem?" The claimant told him to step back and get out of her way. The employer stayed where he was and asked, "What are you going to do? What are you going to do, quit? Be a quitter!" The claimant got her purse and coat and walked out.

The claimant testified that Mr. Marso has a quick and violent temper and she did not want to be around him when he was angry. She saw Mr. Marso lose his temper many times and Ms. Marso had also told the claimant about other instances when he lost his temper. The claimant opted not to return to work.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits.

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 claimant quit her employment due to intolerable working conditions. While Mr. Marso admits confronting the claimant, he denies saying “what the hell is your fucking problem?” However, Ms. Marso testified that Mr. Marso used profanity in his everyday language so it appears more than likely that he used profanity when confronting the claimant. Mr. Marso was also standing so close to the claimant when confronting her that she had to tell him to step back and get out of her way. Ms. Marso acknowledged the claimant made this statement.

Although an employee is not required to give notice of an intent to quit under the above-mentioned code section, an important test used when evaluating situations such as this, 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). The Administrative Law Judge concludes that it was reasonable for the claimant to quit her employment under these circumstances. If the employer wanted to address the claimant’s negative or unpleasant attitude, a warning could have been issued since a confrontation was not likely to produce any positive results.

It is the claimant’s burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has satisfied that burden. Benefits are allowed.

DECISION:

The unemployment insurance decision dated January 27, 2006, reference 01, is affirmed. The claimant voluntarily quit her employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits provided she is otherwise eligible.

sdb/tjc