

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

TRACY L FEYE  
1080 – 26<sup>TH</sup> ST  
MARION IA 52302

PAN-O-GOLD BAKING COMPANY  
PO BOX 848  
ST CLOUD MN 56302

Appeal Number: 05A-UCFE-00001-BT  
OC: 12/12/04 R: 03  
Claimant: Appellant (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 Leaving

STATEMENT OF THE CASE:

Tracy Feye (claimant) appealed an unemployment insurance decision dated January 18, 2005, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Pan-O-Gold Baking Company (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 7, 2005. The claimant participated in the hearing. The employer participated through Curt Geisenhoff, Sales Manager.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time route sales person from September 7, 2004 through October 26, 2004. She voluntarily quit as the result of severe sexual harassment. From the beginning of her employment, the claimant tolerated her training supervisor making comments such as, "this job will make your ass and legs really tight" and "you're well-proportioned." He told her that he and his wife were interested in "three way" and talked about the parties he would have at his house. The supervisor also told the claimant that his wife did not give him "blow jobs." When she was working on the floor, the supervisor would walk by the claimant with "his crotch" in her "face." The supervisor asked her if she had ever "starred in adult films" and something about her making a lot of money that way. The claimant never told this supervisor to stop it, that she did not like it and/or that she would not tolerate it. She never said anything because she did not want to be known as the "bitch" and did not to "rat out" the supervisor since he had a family to support. She "doesn't usually have problems with men" and felt it would go away if she ignored it or once training was over.

On October 21, 2004, the claimant was bent over working when the training supervisor came up behind her, put his hands on both sides of her hips and bumped his crotch area into her butt. At that point she said something to her supervisor, who acted differently afterwards, almost as if he had remorse. The claimant later gave this supervisor notice that she was quitting because she could not handle the workload. She reports that she talked to Curt Geisenhoff on Saturday, October 23, 2004. She claims that she told about all of the sexual harassment she had endured and explained that is why she was really leaving. The employer denies the claimant ever mentioned any sexual harassment and that she only said that she could not handle the workload. The employer told the claimant she did not need to work beyond October 26, 2004.

#### 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. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant demonstrated her intent to quit and acted to carry it out by giving her employer her notice to quit. She quit her employment due to sexual harassment. Sexual harassment, in and of itself, would be considered a good cause to quit one's employment. However, the analysis cannot simply stop there. If a co-employee or even a supervisor is sexually harassing another co-employee, the employer must be made aware of it before any action can be taken to stop it or resolve the situation. The claimant admitted she tolerated sexual harassment since her date of hire but never discouraged it or reported it to anyone. According to her testimony, she never discouraged it until the day she quit and never reported it until after she gave her notice. The employer was not allowed the opportunity to take care of this problem and therefore cannot be held accountable because it failed to act.

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 not satisfied that burden. Benefits are denied.

DECISION:

The unemployment insurance decision dated January 18, 2005, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

sdb/pjs