

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALYSSA M MCNEELEY**  
Claimant

**APPEAL NO. 12A-UI-14851-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXP II DAYTONA'S INC**  
Employer

**OC: 04/22/12**  
**Claimant: Respondent (1)**

Section 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Employer filed a timely appeal from a representative's decision dated December 17, 2012, reference 04, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on January 22, 2013. The claimant participated personally. The employer participated by Mr. Karl Shaen Valderrama, Company President. Claimant's Exhibits A and B were received into evidence.

**ISSUE:**

At issue is whether the claimant left employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: The claimant was employed the captioned company, doing business as Daytona's All Sports Café, from May 9, 2012 until November 23, 2012 when she quit employment. Ms. McNeeley was employed as a part-time server and was paid by the hour. Her immediate supervisor was Christine (last name unknown).

Ms. McNeeley left her employment because she felt she was being treated unfairly by the company owner. On numerous occasions Mr. Valderrama had spent long periods of time verbally warning and chastising the claimant during working hours for what the claimant reasonably considered to be minor infractions. On one occasion the claimant received a lengthy verbal warning and questioning from the company owner after she had been approved by company manager to wear a variation of her normal working clothing on a costume party night. The claimant had also been repeatedly urged to work harder and often told that she should begin to look for a new job.

Ms. McNeeley left her employment based upon her belief that the facility's manager had been instructed by the owner to reduce the claimant's working hours from five nights per week to one night per week in an effort to cause her to quit employment.

It is the employer's position that the company was hiring two new waitresses and therefore made a management decision to reduce the working hours of other employees while the new waitresses were in training. It is the employer's further position that any previous warnings or reprimands given to the claimant were work related.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause attributable to the employer. It does.

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(1) and (4) provide:

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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

(4) The claimant left due to intolerable or detrimental working conditions.

In this matter the evidence in the record is highly disputed. The administrative law judge concludes based upon the totality of the hearing record that Ms. McNeeley left her employment on November 23, 2012 based upon what she reasonably considered to be treatment from the company owner that singled the claimant out for repeated reprimands and threats of the loss of employment for issues that, in most cases, were not significant. Ms. McNeeley believed that the company owner was attempting to force the claimant to quit employment.

The claimant stayed, however, until the employer unilaterally reduced her working hours from five nights per week to one night per week at the direction of the company owner. Based upon the usual 28 to 30 hours of work per week that had been given to her since the time of her hire, the claimant considered this to be a substantial change in the agreement for employment between the parties and left work. Prior to the claimant's leaving she had complained repeatedly to the restaurant manager and the employer knew or should have known that they had been placed on notice that Ms. McNeeley was dissatisfied with her work and would leave if conditions did not improve. Good cause for leaving attributable to the employer has been shown. Unemployment insurance benefits are allowed providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated December 17, 2012, reference 04, is affirmed. The claimant left employment with good cause attributable to the employer. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

css/css