

IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS

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

MISTY SHELSKY  
[REDACTED]

APPEAL NO: 11A-UI-05473-BT

ADMINISTRATIVE LAW JUDGE  
DECISION

BETHANY ENTERPRISES INC  
Q-C MART  
[REDACTED]

APPEAL RIGHTS:

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:

*Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319*

OR

*Fax Number: (515)281-7191*

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.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

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.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS

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

**MISTY SHELSKY**  
Claimant

**APPEAL NO: 11A-UI-05473-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BETHANY ENTERPRISES INC**  
**Q-C MART**  
Employer

**OC: 03/20/11**  
**Claimant: Respondent (1)**

Iowa Code § 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Q-C Mart (employer) appealed an unemployment insurance decision dated April 15, 2011, reference 01, which held that Misty Shelsky (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 18, 2011. The claimant participated in the hearing with Josh Claeys, Manager. The employer participated through Anna DeFrieze, Area Supervisor. Claimant's Exhibit A was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

**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 cashier from March 29, 2009 through March 21, 2011. She voluntarily quit due to a hostile work environment and intolerable working conditions. The employer issued a memorandum on March 16, 2011 which required employees to "SIGN FULL NAME FAX BACK TO BILL BEFORE YOU PICK UP YOUR PAYCHECK." In addition to covering two product issues, the memorandum detailed a new contest for the employees named, "**NEW CONTEST – GUESS THE NEXT CASHIER WHO WILL BE FIRED!!!**"

The game was listed as follows: "To win our game, write on a piece of paper the name of the next cashier you believe will be fired. Write their name (the person who will be fired), today's date, today's time, and your name. Seal it in an envelope and give it to the manager to put in my envelope. Here's how the game will work. We are doubling our secret shopper efforts, and your store will be visited during the day **AND** at night several times a week. Secret shoppers will be looking for cashiers wearing a hat, talking on a cell phone, not wearing a QC Mart shirt, having someone hanging around/behind the counter, and/or no car personal car (sic) parked by the pumps after 7:00 pm, among other things. If the name in your envelope has the right

answer, you will win **\$10.00 CASH**. Only one winner per firing unless there are multiple right answers with the exact same name, date, and time. Once we fire the person, we will open all the envelopes, award the prize, and start the contest again. **AND NO FAIR PICKING MIKE MILLER FROM ROCKINGHAM. HE WAS FIRED AT AROUND 11:30 AM TODAY FOR WEARING A HAD (sic) AND TALKING ON HIS CELL PHONE. GOOD LUCK!!!!!!!!!!!!!!**"

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

Iowa Code § 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.

The claimant quit her employment on March 21, 2011 due to a hostile work environment and intolerable working conditions. Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). 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). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

The area supervisor who participated in the hearing apparently believed the employer's actions to be reasonable since the employees were not following the rules. The administrative law judge finds the employer's "contest" to be egregious and deplorable. The employer's actions have clearly created a hostile work environment by suggesting its employees turn on each other for a minimal monetary prize. The claimant has established this was an intolerable and detrimental work environment.

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. She has satisfied that burden and benefits are allowed.

**DECISION:**

The unemployment insurance decision dated April 15, 2011, 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.



Susan D. Ackerman  
Administrative Law Judge

**MAY 23 2011**

Decision Dated and Mailed

sda/css

# QC Marts

101 Woodland Road  
Milan, IL 61264

Store (309) 787-5253 • Fax (309) 766-9245

## FACSIMILE HEADER SHEET

Received

APR 25 2011

Appeals Section

To: Whom it may concern  
From: Bill Ernst, QC Marts  
Date: April 23, 2011  
Re: Appeal of Misty J. Shelsky decision, [REDACTED]

We wish to appeal the adverse decision rendered by your representative on 4/15/11. The representative ruled that the claimant's leaving was caused by the employer. We disagree and we further believe that no evidence was offered to support this decision.

**Claimant information:**

Misty J. Shelsky  
4407 Northwest Blvd.  
Davenport, IA 52806

**Grounds:**

Claimant claimed working conditions were detrimental and her leaving was caused by the employer.

No evidence was presented to support such a claim.

We presented evidence in the form of a text message from the claimant that proved claimant quit voluntarily.

Claimant claimed that she was not going to "deal with hostility in the workplace". We provided a videotape that showed the claimant making an obscene gesture and mouthing the words "f\*\*k you, Anna" as she was leaving the store. To our knowledge, this is the only example of "hostility in the work place" ever exhibited in this store.

Hearing Preference: By telephone. One person will participate in the telephone hearing - Anna DeFrieze - Area Supervisor - [REDACTED]

Sincerely,



Bill Ernst, President  
QC Marts

Governor Terry E. Branstad

Lt. Governor Kim Reynolds

Director Teresa Wahlert

# IowaWORKS

Eastern Iowa

# FACSIMILE

TRANSMIT TO:

NAME: Appeals

NAME OF BUSINESS: \_\_\_\_\_

DEPARTMENT/POSITION: \_\_\_\_\_

NUMBER OF PAGES (including cover sheet): \_\_\_\_\_

05/13  
5-18-11  
1100 AM  
B

SENDER:

NAME: Misty J. Shefsky

AGENCY/DEPARTMENT: \_\_\_\_\_

IF THIS MESSAGE IS RECEIVED POORLY OR INCORRECTLY, PLEASE

TELEPHONE \_\_\_\_\_

Received  
Appeals Section

1 page

DBRO/ [REDACTED]

OFC 04-0470-19-163 05/16/11 PAGE 1

CHECK DIGIT 9

SHELKY, MISTY, J

PROG UI EFF DTE 03/20/11

STATUS CLEAR-UI BYE DTE 03/18/12

LOCK RSN NONE ADD DTE

REGULAR REC DTE

QUALIFIED EB DTE

CONTROL 04/03/11

PHONE -FACTFIND

TA 52806 4227 PHONE [REDACTED]

IMED RELEASE NO

ABP NO

0 DEPENDENTS TYP 0 BWE LAST 05/07/11 EB-SW NO REGULAR--UI REGULAR---FE

PLANT NOT CLOSED BWE PAID 05/07/11 INCTAX FE/IA WBA [REDACTED] WBA .00

FEMALE WHITE-NH BWE 1ST 03/26/11 CHILD REC YES MBA 4 [REDACTED] MBA .00

D.O.B. 04/04/79 ERP BWE 04/30/11 ERP INTERV 05 APD [REDACTED] APD .00

RPT-MODE VRU-D TEB NO HANDICAP NO BAL [REDACTED] BAL .00

PENSION NO LST EMP 285011000 CITIZEN YES

MONTH 00 LST BEGN 04/06/08 WAITING WK N/A EUC-----UI EUC-----FE

TYPE 0 AMT .00 LST STOP 03/22/10 TRADE NO MBA MBA

CHOICE 0 LST PAID 03/22/10 IB-1 NO APD APD

GROUP CODE 6 HI QTR 1 1/2 YES PARTIAL NO BAL BAL

INDUSTRY 4471 OPAY AMT .00 CWC NO EUC LE SEP

D.O.T. 00000 WAGES/VAC NONE OMIT WAGES NO EUC LST WORK

AVE WAGE 318.87 SEP REAS QUIT LAG QTR 4/10 EUC STOP DTE

DURATION 26.0 EUC TRIM/OFF

75 % = 239.15

P/+1

To whom it may concern

I Ryan Jewel will not be providing my signature to the most recent Facsimile Header sheet. Of the three notes on the sheet, note one gives instructions that I do not understand, and note three has unclear implications.

Concerning note three, it is assumed that employees are being told to have awareness of company rules. If this is the message requiring signature, it is unnecessary as I have already signed my acknowledgement upon hiring. I understand company rules and provided signature for them.

If note three is asking for signature to participate in the contest, I cannot take it serious enough to condone the game with my signature. It is bizarre and unprofessional. I'm also concerned about the announcement of employee termination details.

With respect to Mike Miller, his termination is between him and management. I have the same expectation concerning my employee departure details. I am also concerned about the management's ability to withhold paychecks.

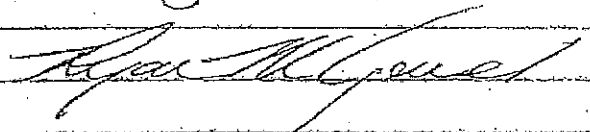
I fully understand and am willing to sign my name on the instructions of notice number two. To avoid confusion, I will not sign on the same sheet.

With respect to the company owner, I recommend withdrawing this paperwork and reconsider the context. I will not sign the context given. If my refusal of signature constitutes termination, I will present my testimony to the Better Business Bureau.

Note: Moore promotes gossip, unprofessionalism, and can be interpreted as lack of a better word - Integrity. Please do not take this letter personally. This letter is simply providing my reasons for not signing my name.

Sincerely,

Ryan Jewel



- Also, if note I was in fact a matter concerning me, then who is Tom Highby, and what return box?



TO CONCERNED OFFICERS:

I WAS MANAGER OF THE QUMART IN QUESTERS FOR THE LAST 10 MONTHS OR SO. I WAS PROMOTED TO THIS POSITION AFTER THE PREVIOUS MANAGER WALKED OUT OF THE STORE. I PROVIDE THIS TESTIMONY TO SUPPORT THE COMPLAINTS OF 2 OF MY EMPLOYEES; MISTY SHELKEY AND RYAN JOUR.

\* THE ENTIRE STAFF DID LEAVE THEIR POSITIONS, ALL PROVIDED NOTICE AND ALL WERE TERMINATED THE FOLLOWING DAY. THE REASON I, AND I BELIEVE ALL THE EMPLOYEES GAVE NOTICE WAS DUE TO A MEMO DISTRIBUTED TO ALL STORE EMPLOYEES AND AT ALL STORES. THE MEMO ASKED EMPLOYEES TO PARTICIPATE IN A CONTEST. THE CONTEST REQUIRED EACH EMPLOYEE TO WRITE DOWN THE NAME OF THE EMPLOYEE YOU FELT WAS GOING TO BE FIRED NEXT. OF COURSE, THIS TALE, OR COMPLAINT LETTERHEAD, WRITTEN BY THE OWNER, BOB ERNST, CREATED AN ATMOSPHERE OF DISTRUST, INTIMIDATION, AND PARANOIA IMMEDIATELY HOWEVER PREVIOUS ACTIONS BY UPPER MANAGEMENT HAD ALREADY CREATED A TASTE OF INTIMIDATION AND DISTRUST.

\* ONE SPECIFIC OCCURRENCE OF INTIMIDATION WAS THE SUSPENSION OF MISTY SHELKEY. ANNA DEFREZE, OPERATIONS MANAGER, CHOSE TO SUSPEND MISTY DUE TO THE USE OF FOUL LANGUAGE IN THE STORE. ANNA RECEIVED AN OVERDRAMATIZED ACCOUNT OF THE INCIDENT FROM A VENDOR PRESENT IN THE STORE DURING THE INCIDENT. ANNA CALLED ME TO INFORM ME WHAT SHE WAS GOING TO DO, REGARDLESS OF MY TESTIMONY TO THE INCIDENT. ANNA APPROACHED MISTY THE FOLLOWING MORNING IN A MOST HOSTILE MANNER. MISTY HAD RECEIVED AND WRITING UP'S FOR ANY BEHAVIOR, AND TO MY KNOWLEDGE NO VERBAL ABUSES. I BELIEVE ANNA ACTED OUT OF HER EMBARRASSMENT DROUGHT OF THE VENDORS AND NOT THE FACTS AND BACKGROUND OF THE INCIDENT OR EMPLOYEE.

Hey Josh,

Just letting you know that I will not be signing that fax sheet by Bill.

I wrote a letter to them providing my reasons. If you could fax it to them or hand it to Anna - or whatever - I would appreciate it.

You may read it if you'd like. I looked into it already, they can get into a lot of trouble for this.

Anyway, see ya later.

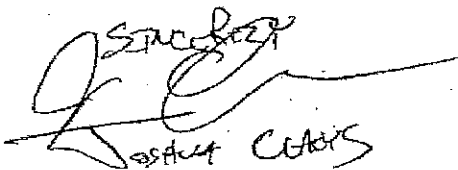
By the way - Can you please get me a copy of that fax?

Ryan

IN PLAIN LANGUAGE, I BELIEVE ACTIONS WERE TAKEN CONSISTENTLY BY UPPER MANAGEMENT BASED SOLELY ON THEIR FEELINGS, NOT FACTS OR IN SOME CASES, RESPECT FOR EMPLOYEE RIGHTS. I FEEL THEY ROUTINELY HAD A INTENTION TO COERCE EMPLOYEES TO TAKE A RANGE OF ACTIONS THAT WERE OFTEN CONTRARY TO EMPLOYEES BEST INTEREST, FOR EXAMPLE WORKING WHILE SICK OR INJURED.

THE COMPANY ROUTINELY PROFITED FROM EMPLOYEES, WITHOUT EMPLOYEE CONSENT. FOR EXAMPLE, IF AN EMPLOYEE IS SHORT A CERTAIN CIGARETTES, THE OWNER TAKES FROM THEIR CHECK THE RETAIL COST OF THE MOST EXPENSIVE CIGARETTES IN THE STORE, NOT WHOLESALE RETAIL.

I HOPE I CONVINCED THE INFORMATION YOU REQUIRED EFFECTIVELY. I AM AVAILABLE FOR FURTHER QUESTIONING AT THE FOLLOWING PHONE # (563) 570-2214. IF I DO NOT ANSWER, PLEASE LEAVE A MESSAGE, I AM EAGER TO ASSIST.

  
 JOSEPH CURTIS  
 FORMER MANAGER  
 OF MARY

UNEMPLOYMENT INSURANCE DECISION

Any correspondence must include claimant name, social security number and original claim date.

Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209

65-5323 (11-07) ANDS Decision - 3090199 8162

SOCIAL SECURITY NO. [REDACTED]  
ORIGINAL CLAIM DATE..... 03/20/11 REF=01  
FILE NUMBER..... 66 363 A 0  
DECISION DATE..... 04/15/11  
CLAIMS OFFICE..... 040470  
EMPLOYER ACCOUNT NO..... 285011-000  
NOTIFICATION DATE IF OTHER THAN DECISION DATE

SHELSKY MISTY J  
[REDACTED]

"BETHANY ENTERPRISES INC  
"Q-C MART  
[REDACTED]

DECISION:

YOU ARE ELIGIBLE TO RECEIVE UNEMPLOYMENT INSURANCE BENEFITS AS LONG AS YOU MEET ALL THE OTHER ELIGIBILITY REQUIREMENTS. THE EMPLOYER'S ACCOUNT MAY BE CHARGED FOR BENEFITS PAID.

EXPLANATION OF DECISION:

OUR RECORDS INDICATE YOU QUIT WORK ON 03/21/11, BECAUSE WORKING CONDITIONS WERE DETRIMENTAL TO YOU. YOUR LEAVING WAS CAUSED BY YOUR EMPLOYER.

LEGAL REFERENCE:

THIS ALLOWANCE WAS MADE UNDER IOWA ADMINISTRATIVE CODE SECTION 871-24.26(4). A COPY IS AVAILABLE AT ANY WORKFORCE DEVELOPMENT CENTER.

TO APPEAL THIS DECISION:

THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 04/25/11, OR RECEIVED BY IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE. IF THIS DATE FALLS ON A SATURDAY, SUNDAY, OR LEGAL HOLIDAY, THE APPEAL PERIOD IS EXTENDED TO THE NEXT WORKING DAY.

QUESTIONS:

IF YOU HAVE QUESTIONS OR NEED INFORMATION, CALL THE WORKFORCE DEVELOPMENT CENTER AT (563) 445-3200 BETWEEN 9 A.M. AND 3 P.M.

APPEAL  
INFORMATION  
INSIDE

IWD Appeals Bureau  
Claimant Exhibit  
Appeal File # 05-473

**QC Mart**  
101 Woodland Road  
Milan, IL 61264

Store (309) 787-5253 Fax (309) 787-5245

*Misty (Not paying the game)*  
*Shelby Come*

FACSIMILE HEADER SHEET

**READ & SIGN  
DO NOT INITIAL - SIGN FULL NAME  
FAX BACK TO BILL BEFORE YOU  
PICK UP YOUR PAYCHECK )**

To: To All Employees  
From: Bill  
Date: March 16, 2011

*gd*  
*(use key MILLER)*  
*(in game)*

1. We will no longer sell the Red Man moist (the round cans of chew). Take this product off your shelves and Amcon will return it. This seems backwards, but AMCON can only return it if it's out of date. So throw it in the return box for Tom Higby. If it's not out of date, it will be soon.
2. We will no long sell the Middleton single cigars EXCEPT the Black & Mild regular item that ships 20 per box (Item # 362860).

*Bill Miller*

3. **NEW CONTEST - GUESS THE NEXT CASHIER WHO WILL BE FIRED !!!**. To win our game, write on a piece of paper the name of the next cashier you believe will be fired. Write their name (the person who will be fired), today's date, today's time, and your name. Seal it in an envelope and give it to the manager to put in my envelope. Here's how the game will work. We are doubling our secret shopper efforts, and your store will be visited during the day AND at night several times a week. Secret shoppers will be looking for cashiers wearing a hat, talking on a cell phone, not wearing a QC Mart shirt, having someone hanging around/behind the counter, and/or no car personal car parked by the pumps after 7:00 pm, among other things. If the name in your envelope has the right answer, you will win **\$10.00 CASH**. Only one winner per firing unless there are multiple right answers with the exact same name, date, and time. Once we fire the person, we will open all the envelopes, award the prize, and start the contest again. **AND NO FAIR PICKING MIKE MILLER FROM ROCKINGHAM. HE WAS FIRED AT AROUND 11:30 AM TODAY FOR WEARING A HAT AND TALKING ON HIS CELL PHONE.**  
**GOOD LUCK!!!!!!!!!!!!**