

CASE NO. AO5-2165

STATE of MINNESOTA

COURT of APPEALS

SHIRLEY NICHOLS (APPELLANT)

VS.

RELIANT ENGINEERING & MFG. (RESPONDENT)

&

**DEPARTMENT of EMPLOYMENT & ECONOMIC
DEVELOPMENT (RESPONDENT)**

APPELLANTS BRIEF AND APPENDIX

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BRIEF

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BRIEF

I believe the decision made by Clarence A. Anderson on September 15, 2005 and again on October 12, 2005 is factually and legally incorrect.

In the letter I received from Judge Anderson it is stated that unemployment benefits shall be disqualified except when:

- (1) The applicant quit the employment because of a good reason caused by the employer as defined in subdivision 3, thus:
 - (a) A good reason caused by the employer for quitting is a reason:
- (2) That would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.

And...

© If an applicant was subjected to adverse working conditions by the employer, the applicant must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before that may be considered a good reason caused by the employer for quitting.

This has been the issue in my case and that is why I have continued to fight for unemployment benefits because I was forced out of my job by a harassing co-worker who was not only a bully, but also had a foul mouth, using derogatory language any time he felt fit and he didn't care who he used it in front of. He also instilled enough fear into me as to where I would rather become unemployed than stay in my job.

I worked for Reliant Engineering for 8½ years loved my job of running the front office and was intending to continue working there for at least another 3-4 years at which I was then going to hopefully semi-retire, but this all changed on 7/21/05. It was actually my 59th birthday and my daughter and 4-year-old twin grandsons came to Reliant to bring me a present and have lunch with me. After lunch Pam Perales told me that I had a phone call and as I was near the lunchroom I took the call there. The phone was on the wall next to the door. On the line was a friend Gloria Splinters who had called to wish me happy birthday, after talking to Gloria for a while and having my back to the door I turned towards the door, when suddenly the door was kicked violently open by a co-worker (Scott Stach). It sounded very loud because he kicked it so hard that it flew open just missing me by inches and making me jump out of my skin so bad that I screamed. Gloria heard the loud bang and my scream and asked me "What's wrong Shirley what's happened.

This was just one of the physically harassing situations by this co-worker I have had to put up with over a period of 15 months, it started just after Scott Stach started working at Reliant. I have had doors slammed in my face; one time whilst carrying a chair, which made the door, hit the chair thus hitting me in the chest. I have had this co-worker (Scott Stach) try to back over me with a forklift whilst I was standing in the safe zone and if it had not been for the girl I was talking to who grabbed my shoulder to warn me, I would have been very seriously hurt.

But physical harassment is not all that I have been subjected too over this period of time but also derogatory verbal language in front of other co-workers, such as calling me a fucking bitch and telling me that all women are fucking bitches. This embarrassed me immensely and was so humiliating to me in front of other male co-workers.

I kept putting up with this time after time hoping that Reliant would eventually do something about it. I could not afford to be out of work, and after 8½ years didn't really want to leave, as getting another job at my age is not easy, I know because I have tried since being out of work and have not had much luck so far, besides I always had good evaluation reviews and had never been written up for anything. Also I was told by Roger Jackson (Owner/President) that I was a valuable employee, so why should I give up a job I was good at for some co-worker who Reliant could not control, also why did Reliant let a good employee leave and chose to keep a bully like Scott Stach as this coworker has had other situations of harassing other coworkers as well, although it wasn't to the extent of his harassment towards me.

Every time some incident has happened to me by this co-worker at Reliant I have reported it to my supervisor Office Manager Pam Perales, also General Manager/Vice President Phil Askren. This is what I am supposed to do according to the employee handbook guidelines, which incidentally states that; "Reliant prohibits any harassing, assaulting, unprovoked physical attack, slurs, threats, derogatory comments, by one employee to another employee".

I have never been spoken to after any of these incidents, as to whether Scott Stach was written up or reprimanded, which, consequently made me feel very unsafe at Reliant and when that final incident occurred on 7/21/05 I was so scared for my safety. What if I hadn't jumped out of the way of the forklift, or had not moved away from the door in time. This was not fair of Reliant to always turn a blind eye to these situations, hoping I would go home and forget them. Also Reliant in their appeal said Scott Stach didn't know I was there when he kicked the door. This is untrue, as the lunchroom consists of more windows than walls. It has (2)- 6 ft. x 5ft. windows each side of the door and (1)- 1½ ft. x 1 ft window in the door so people can see who is on the other side of the door when entering.

Pam Perales also said I went out to the co-workers work area and screamed at him and pushed the part in his hand. Yes I did go out and speak to Scott Stach about kicking the door because I had waited and waited for Reliant to do something about it and they had not, also I could hear him laughing and joking about it, but it is untrue when they said I screamed at him and pushed the part, in fact when I confronted him about the situation he was the one who screamed at me saying "get away from me you fucking bitch or I will hit you with this part. I am not stupid enough to touch a metal part, which was about 4 ft. x 2 ft with very sharp edges, especially when gloves are worn by him to handle the part. Also how did Pam Perales even know what happened as she was not even there. But a lot of the other co-workers were present at the time; they know the language Scott used and how violently he acted. Also it is well known at Reliant by the employees that Scott Stach has verbally told another employee (Dave Volkman) that; "If Reliant ever fires him, he will get a gun and come back and shoot the employees".

Reliant had 15 months to deal with Scott Stach and they chose not to take definite action even though they knew Scott Stach deliberately physically and verbally harassed me. Was Reliant scared to fire Scott Stach in case he carried out his threat of shooting the employees?

I was told by Pam Perales on 7/21/05, just before leaving that afternoon, that they were going to have a meeting to see what they were going to do about Scott kicking the door but they never ever called me at home to tell me that they had taken care of the situation and that I could return to Reliant and I would be safe, instead the next thing, I received a letter saying; "That since I had taken it upon myself to terminate, "here is my wages". I even had to pull over to the side of the road to throw up after leaving Reliant because of how upset I was.

Even though this was a very stressful and depressing work environment to work in, I always showed up for work never letting Reliant down.

In Judge Anderson letter it said; "On 7/21/05, Nichols said she couldn't take it any more, gathered together many of her personal possessions, and left in the middle of the day. She did not return to work or call in for two days, and apparently had no intention of returning to work unless Reliant called her, told her that Stach had been discharged, and asked her to return. "This must be considered a quit by job abandonment".

I do not agree that this is job abandonment because of the situation and the reason why I left that afternoon. Most companies who cared about their employees at least would have called to ask if I was all right, also informing me of the outcome of their meeting, especially as they told me that they were going to have a meeting. I feel Reliant on the other hand was hoping I didn't call so they could say I terminated my employment with them even though it is listed in their guideline that "Absence of one (1) day without notifying the company shall constitute termination without notice".

Doesn't an employer have some obligation to make sure that as a employee of Reliant I could go to work and be safe, making sure that none of these situations I went through should be allowed to happen, let alone continue for 15 months without Reliant taking some action to insure my safety and well being at work. Also keeping Scott Stach as one of their employees is like waiting for a time bomb to explode, not knowing if one day he will return and shoot the employees.

Whatever the out come of my appeal for unemployment benefits, I know that everything I have ever said in my transcript or wrote in my appeal is the truth and I hope that nobody ever have to be subjected to the harassment, physically or verbally that I was.

Signed,

Shirley Nichols

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).