

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

MARTHA L RIVERS
433 – 3RD ST
WEST DES MOINES IA 50265

WEST DES MOINES COMMUNITY
SCHOOL DISTRICT
ATTN LINDA SHERIFF
3550 MILLS CIVIC PKWY
WEST DES MOINES IA 50265-5556

Appeal Number: 04A-UI-04150-RT
OC: 03-14-04 R: 02
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Martha L. Rivers, filed a timely appeal from an unemployment insurance decision dated April 2, 2004, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on May 5, 2004 with the claimant participating. Jan Miller-Hook, Director of Business Services, and Cheryl Huisman, Assistant Superintendent of Human Resources, participated in the hearing for the employer, West Des Moines Community School District. Claimant's Exhibit A was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Claimant's Exhibit A, the administrative law judge finds: The claimant was employed by the employer as a full-time accounting clerk from June 28, 2000 until she voluntarily quit effective March 18, 2004. On March 4, 2004, the claimant submitted a written resignation effective March 18, 2004. The claimant quit because she was informed that she would be doing some job training or cross-job training and the claimant did not want to do so. The cross-job training would require that the claimant be trained by Mary Simcox and Linda Sheriff. The claimant could not get along with either of those and did not want to go through the training and therefore quit. The claimant testified that Ms. Simcox believed that she was the claimant's boss and criticized her and asked her when her doctor was going to decide what was wrong. The claimant was on FMLA leave from February 23, 2004 to March 5, 2004 for carpal tunnel surgery and Ms. Simcox was inquiring about that. The claimant also testified that at one point Ms. Simcox remarked to the claimant in the presence of the claimant's daughter something to the effect "if she needs it" referring to the claimant's surgery. The claimant also testified that comments were made at a meeting to the claimant when the claimant was told to take care of certain issues herself. Concerning Ms. Sheriff the claimant testified that Ms. Sheriff asked the claimant about her clothes and would come over and observe what the claimant was doing. The claimant testified that all of this caused stress on her, which exacerbated her depression and anxiety.

When the claimant was first hired she already had a depression and anxiety condition. This was exacerbated by personal matters including the death of a family member and the death of the claimant's best friend. The claimant did not specifically mention this to the employer when she was hired but it did appear in the claimant's physical. The claimant's physician at Claimant's Exhibit A states that the conditions at her employment contributed significantly to exacerbation of her depression and anxiety but goes on to say "that her abrupt resignation from this position was not something that she had given adequate thought and consideration." The claimant's physician did not tell the claimant that she had to quit her employment because of her depression and anxiety condition. The claimant testified that she quit because of a general attitude at work and she generally felt uncomfortable at work. The claimant did express some concerns about these matters to the employer's witness, Jan Miller-Hook, Director of Business Services, who talked to both the claimant and Ms. Simcox and asked for patience and told the two to work together. The claimant at no time ever indicated or announced an intention to quit to Ms. Miller-Hook or to anyone else at the employer. The claimant did ask at one point if it was possible to be moved to a different area and Ms. Miller-Hook told her that it was possible but that it was very involved because it would necessitate moving five different people and Ms. Miller-Hook did not believe that this would be a solution. The claimant asked for no other accommodation.

Approximately one year earlier the claimant had attempted to quit because she was not happy with her work but stayed. In her performance review dated July 22, 2003, the claimant even included a statement that she believed more job sharing was needed. However, less than eight months later the claimant quit because she was going to have some cross-job training.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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), (2), (3), (4), (6)b, (6)a 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.

(2) The claimant left due to unsafe working conditions.

(3) The claimant left due to unlawful working conditions.

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

(6) Separation because of illness, injury or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was

available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

871 IAC 24.25(1), (6), (21) provide:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(6) The claimant left as a result of an inability to work with other employees.

(21) The claimant left because of dissatisfaction with the work environment.

The parties concede that the claimant left her employment voluntarily. The issue then becomes whether the claimant left her employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer.

Concerning the claimant's working conditions, the administrative law judge concludes that there is not a preponderance of the evidence that claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that she was subjected to a substantial change in her contract of hire. The claimant testified that one of the reasons for her leaving work was the treatment by coworkers, Mary Simcox and Linda Sheriff. However, the claimant did not demonstrate by a preponderance of the evidence that the conduct of either or both was sufficient to make her working conditions unsafe, unlawful, intolerable or detrimental. The claimant testified that Ms. Simcox criticized her and asked about when the doctor would decide what was wrong with her and remarked to her daughter in regards to the claimant's surgery "if she needs it" and made a comment at a meeting that the claimant could take care of issues herself. The administrative law judge does not believe that these comments are designed to really harass or make the claimant's working conditions difficult. The claimant had been off on FMLA leave from February 23 to March 5 for carpal tunnel syndrome and much of the comments by both Ms. Simcox and Ms. Sheriff were in regards to the claimant's condition. The administrative law judge believes that the claimant may have misinterpreted some of their statements. The claimant testified that Ms. Sheriff asked about her clothes and would come over to see what was going on. Again the administrative law judge does not believe that this rises to the level of intolerable or detrimental working conditions. The bottom line is that the claimant simply did not like to work with those two individuals and was facing some training from both through cross-job training and decided to quit.

Concerning the claimant's medical condition, the administrative law judge concludes that the claimant did not demonstrate by a preponderance of the evidence that she was compelled to leave her employment because of her anxiety and depression condition. There is also not a

preponderance of the evidence that the claimant's working conditions exacerbated her anxiety and depression condition. This was a pre-existing condition which the claimant had when she came to work and the claimant even testified that it was exacerbated by personal matters including the death of a family member and the death of her best friend. It is true that the claimant's physician states that the conditions of her employment contributed significantly to the exacerbation of her depression and anxiety but the administrative law judge does not believe that the conditions as testified to the claimant would really exacerbate her stress and anxiety and depression. Finally, although the claimant did express concerns to Jan Miller-Hook, Director of Business Services, the claimant conceded that she never informed anyone at the employer that she intended to quit unless her concerns were addressed by the employer. There is also no evidence that the claimant asked specifically for any accommodation. The claimant did visit with Ms. Miller-Hook about the possibility of moving to a different area and Ms. Miller-Hook kept this as an option but indicated that it was involved and apparently the claimant no longer pursued it. There is no evidence that the claimant has recovered and that this recovery was certified by a physician and the claimant returned to the employer and offered to go back to work and no suitable work was available. Therefore, the administrative law judge concludes that even if the claimant had separated only because of her illness, whether employment related or not, it would not be good cause attributable to the employer.

The administrative law judge concludes that the real reason the claimant left her employment was to avoid the cross-job training, which was imminent because it required that she be trained by two individuals with whom the claimant could not work. Leaving work as a result of an inability to work with other employees is not good cause attributable to the employer. Further, leaving work because of a dissatisfaction with the work environment is also not good cause attributable to the employer. Finally, leaving work rather than perform the assigned work as instructed is not good cause attributable to the employer. See 871 IAC 24.25(27). The administrative law judge notes that approximately eight months prior to the claimant's separation she herself had indicated in a performance review that job sharing was needed but eight months later refuses to go through the training. Although the claimant did express concerns to the employer about some of these matters, the claimant never indicated or announced an intention to quit if any of the concerns were not addressed.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer, and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

DECISION:

The representative's decision of April 2, 2004, reference 01, is affirmed. The claimant, Martha L. Rivers, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits.

tjc/kjf