

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CHRISTINA A ERNST

Claimant

APPEAL NO. 18A-UI-11880-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARTIN LUTHER HOME CORPORATION

Employer

OC: 11/04/18

Claimant: Respondent (1)

Section 96.5-1 - Voluntary Quit

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Martin Luther Home Corporation (employer) appealed a representative's November 29, 2018, decision (reference 01) that concluded Christina Ernst (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 27, 2018. The claimant participated personally. The employer was represented by Doug Henry, Attorney at Law, and participated by Janet Warren, Executive Director; Barbara Barker, Nursing Home Administrator; Kim Harkey, Director of Nursing; and Michelle Hein, Registered Nurse/Staff Nurse. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant, Ms. Ernst, was hired on June 19, 2018 as a full-time human resources director. The employer was a senior home, had two campuses and employed approximately 300 people. Ms. Ernst's direct supervisor was the executive director. The executive director reported to the board chairman.

On October 24, 2018, Ms. Ernst received a complaint about a Registered Nurse/Staff Nurse Hein who was bullying a certified nursing aid (CNA). Ms. Ernst had discussed previous bullying issues by this nurse with Administrator Barbara Barker and the administrator agreed the matter was serious. Executive Director Janet Warren was absent. Ms. Ernst asked Nurse Hein to meet with her. Nurse Hein did not meet immediately with the claimant because she thought the matter was resolved by the Director of Nursing (DON). When she finally met with Ms. Ernst, she became belligerent, poked Ms. Ernst in the chest with her finger, and gave her written notice of resignation. Nurse Hein gathered her items and started to leave the building. As Nurse Hein approached the door she told a subordinate to "shut up". Ms. Ernst said, "You need to leave now or I'll call the police".

On October 25, 2018, Executive Director Warren returned to work and learned about the October 24, 2018, situation. Executive Director Warren said, "Finally an end of the reign of" Nurse Hein. Nurse Hein called the facility asking if she could return to work. Ms. Ernst expressed her opinion that Nurse Hein should not return. Executive Director Warren and Administrator Barker were concerned with staffing. They discussed the ramifications of losing a nurse. Administrator Barker did not know whether staffing or bullying was more important. Ms. Ernst told Executive Director Warren she could not work for someone who did not take hostile work environment complaints seriously but it was Executive Director Warren's decision.

On October 25, 2018, the claimant spoke to Board Chairman Croghan about the situation on October 24, 2018. He assured the claimant that the matter would be reviewed and dealt with. He asked the claimant to keep him informed.

October 26, 2018, Executive Director Warren told Ms. Ernst's staff that Ms. Ernst would not be returning to work. The staff was surprised to see Ms. Ernst and Ms. Ernst was surprised by Executive Director Warren's announcement. Executive Director Warren made a determination to bring back Nurse Hein with a written warning and thirty-day probation. She thought Nurse Hein was not a bully but responded with "a reaction that escalated". Executive Director Warren assumed Nurse Hein created a hostile situation and then Ms. Ernst provoked her. When Board Chairman Croghan found out Nurse Hein had been reinstated, he said, "You have got to be kidding me". Board Chairman Croghan asked Ms. Ernst to stay and the matter would be resolved. Ms. Ernst told Board Chairman Croghan she could not work for someone who did not take hostile work environment complaints seriously.

On October 26, 2018, Executive Director Warren learned Board Chairman Croghan was involved in the matter. She stopped communicating with Ms. Ernst verbally and through email except for one email on October 29, 2018. Executive Director Warren told Ms. Ernst to reinstate Nurse Hein's timecard and benefits. The claimant responded compliance to Executive Director Warren on October 29, 2018.

Executive Director Warren reassigned some of Ms. Ernst's duties without notice to Ms. Ernst. Ms. Ernst had been in charge of payroll but without notice, payroll was transferred to accounting. Employees from accounting job shadowed Ms. Ernst's subordinates, not her. Executive Director Warren replaced Ms. Ernst's name with another employee's name as the point of contact for vendors without any reason given. Subordinates told Ms. Ernst that Executive Director Warren asked them to write statements for the Board maligning the claimant. Executive Director Warren said the statements were written without her request. There was gossiping and rumors in the workplace about Ms. Ernst. She kept busy with open enrollment, recruiting, and hiring.

On October 29, 2018, Administrator Barker told the director of nursing to prepare a reprimand for acting unprofessionally to issue to the CNA who complained about Nurse Heine. They were unable to issue the reprimand because the CNA had transferred to the other employer facility. Five of the seven employees who filed formal complaints against Nurse Hein had transferred. The employer complained that the claimant was setting up the opportunity for witness protection. CNA's continued to complain to Ms. Ernst that Nurse Hein was yelling at them and calling them names.

On October 29, 2018, November 1 and 9, 2018, the claimant communicated all the information she was gathering to Board Chairman Croghan. The claimant found that Nurse Hein had bullied and harassed seven certified nursing assistants. Serious complaints had been filed

because of her actions. Executive Director Warren was showing favoritism to her own daughter and Administrator Barker's friends. In November 2017, another supervisor started bullying a subordinate to the point that the subordinate had attempted suicide. The bullying continued to November 9, 2018. She also saw that Executive Director Warren was attempting to alter an employee's timecard to withhold pay without the employee's permission. The claimant indicated this was unlawful and was an unethical practice.

By November 9, 2018, the claimant felt she had been isolated, shunned, and disrespected by Executive Director Warren. The Board had made no changes since her reports on October 25, 29, and November 1, 2018. On November 9, 2018, the claimant resigned due to a hostile work environment.

The claimant filed for unemployment insurance benefits with an effective date of November 4, 2018. The employer participated personally at the fact finding interview on November 27, 2018, by Janet Warren.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant voluntarily quit work with good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.26(4) provides:

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:

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

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). The Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. *Hy-vee, Inc. v. Employment Appeal Board and Diyonda L. Avant*, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). On October 25, 2018, the

claimant notified the employer of hostile working conditions of other employees. After her notification, the executive director retaliated against her for reporting the work situation to the board chairman. The claimant continued to update the board chairman and nothing was done to protect her from the executive director. The claimant subsequently quit due to those conditions. The claimant is eligible to receive unemployment insurance benefits, provided she meets all the qualifications.

The claimant's and the employer's testimony was not the same. The administrative law judge finds the claimant's testimony to be more credible because she was an eye witness to the events for which she was terminated. The employer did not provide the testimony of the board chairman. In addition, the executive director's testimony was internally inconsistent. One such example was when she said the claimant had "no payroll responsibilities" and "she didn't process payroll". Later, the executive director said the claimant supervised and managed payroll. The claimant provided an email from the executive director from October 29, 2018, directing the claimant to reinstate the timecard and benefits of Nurse Hein.

DECISION:

The representative's November 29, 2018, decision (reference 01) is affirmed. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs