

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RENEE B POPKES-HEITRITTER
Claimant

APPEAL NO. 13A-UI-08771-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHELDON VISION CARE PC
Employer

OC: 06/30/13
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated July 24, 2013, reference 01, which denied benefits finding the claimant quit employment under disqualifying conditions. After due notice, a telephone hearing was held on September 4, 2013. Claimant participated. Participating as a witness for the claimant was Dr. Allen Jones, Former Owner/Part-Time Employee. The employer participated by Dr. John Michels, Practice Owner. Employer's Exhibits A, B, and C were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

The claimant was employed by the captioned dental office for approximately 11 years before the practice was purchased by Dr. John Michels on March 1, 2013. The claimant was employed as a full-time reservationist and was paid by the hour.

On May 20, 2013, Ms. Popkes-Heitritter submitted a resignation letter to be effective July 25, 2013. Claimant indicated that she and her family had purchased a downtown retail space and planned on opening a children's clothing store. After the claimant had submitted her resignation letter, Dr. Michels noted what he considered to be an intentional decline in the claimant's performance. On some occasions the nightly deposit made out by the claimant did not match the funds deposited. The funds were later accounted for. The employer also noted that Ms. Popkes-Heitritter was scheduling new patients for Dr. Allen Jones although Dr. Jones would soon be retiring from the practice. After a number of scheduling changes and the claimant's practice of continuing to schedule Dr. Jones for appointments in violation of directives given to her by the new owner, Dr. Michels informed the claimant of his intention to make her resignation effective June 29, 2013 and to pay her three weeks paid time off that not yet would have accrued. The claimant considered the matter and the parties agreed that the employment relationship would end at the end of June, 2013.

Additional reasons given by Ms. Popkes-Heitritter for leaving were a disagreement with a fellow worker and the fellow employee's posting of Facebook entries that were "hurtful" to the claimant. Dr. Michels had attempted to address the claimant's concerns with the other employee but the employer could not control the other worker's off-duty conduct on Facebook. Ms. Popkes-Heitritter was also dissatisfied as a number of jobs in the office had gone to the other worker.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes the claimant left employment with good cause attributable to the employer. It does not.

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 24.25(19), (6) provides:

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:

(19) The claimant left to enter self-employment.

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

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6(2). An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993).

In the case at hand, the claimant tendered her resignation because she disliked working with a new employee and disagreed with management decisions being made by the office's new owner. Although the claimant had vocalized dissatisfaction about these matters, she had not given notice to the employer in advance of her resignation of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. The claimant tendered a pre-prepared resignation to her employer on May 20, 2013 after Dr. Michels had inquired as to whether the claimant and her family had purchased a commercial building in a downtown area. The resignation tendered that day had an effective date of July 25, 2013 and the claimant repeatedly requested that Dr. Michels verify her resignation by signing his name to it. Dr. Michels thought this practice to be unusual and declined.

Based upon what the employer reasonably considered to be substantial declines in Ms. Popkes-Heitritter's performance after she tendered her notice of leaving and her failure to follow reasonable work-related directives, the employer met with the claimant to set a more reasonable resignation period, setting the final day of employment to be June 29, 2013. Ms. Popkes-Heitritter agreed. Claimant was paid extra remuneration by the employer in the form of PTO that would not otherwise have been available to the claimant.

The administrative law judge concludes based upon the evidence in the record that the claimant's primary reasons for leaving the employment were not attributable to the employer but based upon her desire to engage in self-employment in the future. As the claimant had not previously given notice that she would quit employment because of dissatisfaction with the other female employee and the amount of control wanted by the claimant over the employee was not available to the employer, the claimant's leaving was without good cause attributable to the employer. Unemployment insurance benefits are denied.

DECISION:

The representative's decision dated July 24, 2013, reference 01, is affirmed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs