

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBYN L LANE
Claimant

APPEAL NO. 10A-UI-02717-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PLANTPEDDLER INC
Employer

OC: 01/10/10
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Plantpeddler, filed an appeal from a decision dated February 10, 2010, reference 01. The decision allowed benefits to the claimant, Robyn Lane. After due notice, a hearing was held by telephone conference call on April 1, 2010. The claimant participated on her own behalf. The employer participated by Office Manager Lori Lukes and Vice President Rachel Gooder.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Robyn Lane was employed by Plantpeddler from March 9, 2009 until April 24, 2009 as a full-time office assistant. She submitted a written resignation to Vice President Rachel Gooder on April 24, 2009, stating she did not feel the job was what she wanted to do and it was “not a good fit.”

Ms. Lane had talked with Ms. Gooder about one week prior about her concerns she was not being trained well enough. The employer had provided her with a job description and written instructions on how to perform all her regular job duties. Office Manager Lori Lukes was available if she had any questions. Ms. Gooder explained the job would take a while to learn because it could be complex and this was the busy season for the company. Ms. Lane was not expected to learn everything at once and she should ask questions if she needed help. Plantpeddler management was satisfied with the claimant’s work performance and no one had complained she was not catching on well enough.

The claimant also complained that Ms. Lukes and another employee, Kyle, would “yell and curse” at each other and she found this unacceptable. Ms. Gooder talked with both individuals after talking with Ms. Lane and told them to start getting along with one another, stop the vulgarity, and conduct themselves more appropriately in the office. Ms. Lane did not bring any further complaints or concerns to Ms. Gooder before she quit the next week.

Robyn Lane has received unemployment benefits since filing an additional claim with an effective date of April 26, 2009.

REASONING AND CONCLUSIONS OF LAW:

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(33) 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:

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

The claimant quit because she did not feel her work was satisfactory and she did not think the job was "what she wanted to do" and "not a good fit." The employer was satisfied with her work performance and had never issued any sort of disciplinary action because of poor work performance.

Her contention that it was "hostile" work environment due to arguing between co-workers was promptly addressed by the employer. She asserts other incidents occurred after the vice president spoke with the other staff but this has not been supported by any evidence. In any event, she did not go back to Ms. Gooder to complain the problem had not been alleviated. The employer cannot address a problem of which it has no knowledge and her failure to apprise the vice president of any further incidents, and allow her to address the problem again, constitutes a quit without good cause attributable to the employer. *Denby v. Board of Review*, 567 P.2d 626 (Utah 1977).

The record establishes the claimant quit without good cause attributable to the employer and she is disqualified from receiving unemployment benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the

overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of February 10, 2010, reference 01, is reversed. Robyn Lane is disqualified and benefits are withheld effective April 26, 2009, until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css