unemployment insurance records for the claimant. The hearing on November 8, 2005 was recessed at 2:00 p.m. because all of the evidence could not be obtained before the administrative law judge had another hearing scheduled at 2:00 p.m. The hearing was reconvened at 3:09 p.m. on November 10, 2005 and ended when the record was finally closed at 4:07 p.m.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit 1 and 2 and Claimant's Exhibit A, the administrative law judge finds: The claimant was employed by the employer as a full–time qualified mental retarded professional (QMRP) from August 17, 2004 until she voluntarily quit on September 16, 2005. The claimant quit by providing the employer a written resignation on August 12, 2005, allowing the employer a two-week notice. The claimant then worked a few more days and then took the accumulated paid time off benefits she had which established her quit effective September 16, 2005. The claimant quit because of incomplete and ineffective training and because her job was overwhelming. The employer provides services to mentally disabled and mentally retarded including residential services. Not only did the claimant have to work with the mentally retarded or the mentally disabled, but she also had to prepare various forms of paperwork concerning the individuals to whom she provided services and other paperwork required by the employer. The claimant's position required that she be a QMRP, which is not a recognized certification by any certifying agency, but is a position set out in Iowa law. A QMRP requires a four-year degree and one year of experience working with mentally disabled or mentally retarded. The claimant had a Bachelor of Science degree in education for kindergarten through sixth grade and also had a multi-category certification from the Department of Education as a special education teacher. However, the only experience the claimant had with working mentally disabled or mentally retarded was when she student taught a special education class so as to obtain her multi-category certification. This was set out on the claimant 's job application or résumé.

From almost the beginning the claimant found her job overwhelming. The claimant encountered extensive job stress requiring help from a psychologist and her personal physician. Their statements appear at Claimant's Exhibit A. The statements do indicate that the claimant experienced significant stress related to her job. However, neither the statements nor the psychologist or physician specifically told the claimant that she had to quit. The claimant was experiencing problems at work because she did not know what was going on because she felt her training was incomplete. Her job was most demanding requiring work with mentally disabled and mentally retarded and significant paperwork. The claimant, intellectually, was aware of what the job entailed but was not prepared for what she encountered.

The claimant repeatedly expressed concerns about her job to the employer's witness, Aileen Donehower, Intermediate Care Facility Mentally Retarded (ICFMR) Manager. Ms. Donehower would tell the claimant that they would work it out. On some occasions the claimant indicated that she would have to quit her position if her concerns were not addressed. The claimant expressed these concerns on January 27, 2005 and in June and July of 2005. The claimant did receive additional training as shown at Employer's Exhibit 2 but it was not sufficient to enable the claimant to carry on her work without the stress discussed above. Towards the end of July or the first part of August Ms. Donehower made the initial arrangements with the employer's employee assistance provider for the claimant to see a psychologist. When the claimant would discuss these matters with Ms. Donehower she would refer both to her job and the needs of her family causing her stress, because the claimant

became a single parent. The claimant occasionally asked to work at home and the employer permitted the claimant to do so on a couple of occasions. Finally, in June or July, a complaint was made to the State of Iowa concerning something the claimant had done. An investigation ensued and the employer was informed that the claimant would need to improve. The claimant was not reprimanded nor was she informed that she would be discharged nor was her job in jeopardy. Nevertheless, this complaint was a significant concern to the claimant. It was during this time that the claimant expressed concerns to Ms. Donehower as noted above. She also expressed concerns to another supervisor, Mark Hargrafen. Ms. Donehower's response was that she and the claimant would work it out together. The employer assigned another manager, Karla Crow, to assist the claimant. Ms. Donehower told the claimant that her job would take a while to put together. During this time the claimant believed that she was encountering some disrespect from Mr. Hargrafen. The claimant expressed concerns to Ms. Donehower about Mr.. Hargrafen indicating that she felt uncomfortable with him. The claimant did not provide any specifics to Ms. Donehower. Finally, in mid-September of 2005, Ms. Crow told the claimant that she was no longer supposed to talk to her. At this point, the claimant could not function in her job anymore and she quit.

Among the problems encountered by the claimant was not only working with mentally disabled or mentally retarded but also the paperwork and documentation required as part of the work with mentally disabled or mentally retarded. Some training was offered in the paperwork. The claimant did not avail herself of all the training opportunities offered by the employer as shown at Employer's Exhibit 1, but the claimant did take much training, as shown at Employer's Exhibit 2. However, much of that training appears to be merely basic tests involving true/false, fill in the blanks with a list of the answers available, or multiple choice questions. Many of the questions seem basic; for example, the definition of terms such as ethics and empathy and first aid true/false questions such as whether most victims of serious injury go into shock and whether moving a person with a broken back could cause paralysis.

The claimant suffered a breakdown seven years earlier unrelated to this employer. She was prescribed various medications at that time and thereafter. The claimant has experienced depression problems on and off since her breakdown. The claimant underwent a divorce, which also added to her stress.

Pursuant to her claim for unemployment insurance benefits filed effective September 18, 2005, the claimant has received unemployment insurance benefits in the amount of $1,897.00 as follows: zero benefits for benefit week ending September 24, 2005 (earnings $400.00); $337.00 for benefit week ending October 1, 2005; $91.00 for benefit week ending October 8, 2005 (earnings $330.00); $237.00 for benefit week ending October 15, 2005 (earnings $184.00); $337.00 for benefit week ending October 22, 2005; $221.00 for benefit week ending October 29, 2005 (earnings $200.00); and $337.00 for benefit week ending November 5 and 12, 2005.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was not.

2. Whether the claimant is overpaid unemployment insurance benefits. She is 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 24.26(2), (3), (4), (6)a-b 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:
>
> (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.
>
> 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.
>
> 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.

The parties agree, and the administrative law judge concludes, that the claimant left her employment voluntarily effective September 16, 2005. 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 the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. Although it is a close question, the administrative law judge

concludes that the claimant has met her burden or poof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer.

The bottom line here is that the employer offered the claimant, and the claimant accepted, a position for which the claimant was unprepared and unqualified. The position was for a qualified mental retarded professional (QMRP) which is not a recognized certificated or licensed position, but is rather defined by state law as one that requires a four degree and one year of experience working with mentally disabled or mentally handicapped. The claimant had the four-year degree, but did not have the requisite experience. The only relevant experience the claimant had prior to her employment was as a student teacher in a special education class, which enabled the claimant to obtain a multi-category certification from the State Department of Education allowing her to teach special education students. The administrative law judge does not reach any conclusion as to whether the claimant was qualified or capable of teaching special education students in a public school classroom setting, but only concludes that the claimant was not qualified or prepared for the position she accepted with the employer. This position required that the claimant work with mentally disabled and mentally retarded individuals in a residential setting and deal with the required and necessary documentation and paperwork associated with such position. The claimant was overwhelmed and "in over her head."

The claimant expressed concerns many times to the employer's witness, Aileen Donehower, Intermediate Care Facility Mentally Retarded (ICFMR) Manager. The response of Ms. Donehower was that they would work it out and they would work on it together and that the job took a while to put together. The problems the claimant was encountering were not only working with mentally disabled and mentally retarded but dealing with the paperwork and documentation necessary for such work. The claimant requested additional training and it was provided as shown at Employer's Exhibit 2. However, much of the examples of training consist merely of tests; many of which are simple and basic. The administrative law judge does not believe that this was adequate training to address the claimant's needs and repeated requests for help. It is true that the claimant did not avail herself of all the training offered by the employer, as shown at Employer's Exhibit 1, but the administrative law judge concludes that she did attempt to attend much of the training.

The claimant's stress increased as she attempted to deal with her job and peaked as a result of some actions by the claimant, for which a complaint was made to the State of Iowa and an investigation ensued. It is true that the claimant was not reprimanded, nor was she ever told that she would be discharged nor was her job placed in jeopardy, but the stress of the complaint and the investigation added to the claimant's stress. The employer recognized the claimant's stress because Ms. Donehower made the initial arrangements with the employer's employee assistance program for the claimant to consult a psychologist. The claimant consulted the psychologist several times. Ms. Donehower also assigned another manager, Karla Crow, to help the claimant. Finally, Ms. Crow told the claimant that in mid-September of 2005 that she was not supposed to talk to her anymore. The claimant then quit.

There is enough fault here to assign to all the parties. However, the administrative law judge is constrained to conclude that the claimant made reasonable calls for help to the employer but that the employer's response was neither prompt nor satisfactory. The administrative law judge specifically notes that the employer was aware of the claimant's increasing stress, because the employer, at the end of July or the first of August of 2005, made the initial arrangements with the employer's employee assistance provider for the claimant to see a psychologist. Clearly, the employer was aware of the claimant's state of mind and her stress and her deteriorating

ability to function in her position. Accordingly, although it is a close question, the administrative law judge concludes that the employer's slow response and ineffective response to the claimant's calls for help made the claimant's working conditions intolerable and detrimental and perhaps unsafe. The administrative law judge is not unmindful that the employer knew or should have known that claimant's experience but nevertheless placed the claimant in a position for which she was not qualified nor prepared.

It is true that the claimant's stress was not caused solely by her employment and further true that the claimant had suffered stress and depression for a number of years prior to her employment. However, the administrative law judge must conclude on the evidence here that the claimant's stress and depression were exacerbated seriously by her employment. This is confirmed by the claimant's physician statements at Claimant's Exhibit A. The administrative law judge concludes that the claimant has presented competent evidence showing adequate health reasons to justify her termination. The administrative law judge also concludes that there is sufficient evidence that even if her employment did not cause her stress and depression, it certainly aggravated it and made it impossible for the claimant to continue in her employment. There is also evidence that the claimant expressed numerous concerns to the employer and informed the employer of the work related health problem. The employer was even the initiator of employee assistance. There is also evidence that the claimant indicated or announced an intention to quit unless the problem was corrected or accommodated. The employer did not correct or accommodate fully the claimant's problem and the claimant quit. Accordingly, the administrative law judge concludes that the claimant's separation was due to an employment related illness and was good cause attributable to the employer for that reason. Since the administrative law judge concludes that the claimant's separation was due to her employment, it is not now necessary or relevant to determine a separation based upon a non-employment related illness.

What occurred here was far more than dissatisfaction with the work environment. See 871 IAC 24.25(21). The administrative law judge does conclude that the claimant's complaints about Mr. Hargrafen are too vague and unsubstantiated to cause her working conditions to be intolerable or detrimental based upon her problems with Mr. Hargrafen. However, as noted above, the administrative law judge concludes that the claimant's other difficulties with her position did make her working conditions intolerable and detrimental. It is true that in determining whether a claimant left work voluntarily with or without good cause attributable to the employer, an objective reasonable belief standard should be used. See O'Brien v. Employment Appeal Board. Although it is a close question, the administrative law judge concludes that a reasonable person in the claimant's situation would have believed that her working conditions were intolerable or detrimental. Finally, the claimant gave the employer a reasonable opportunity to address her concerns including indicating or announcing an intention to quit if her concerns were not addressed.

In summary, and for all the reasons set out above, although it is a close question, the administrative law judge concludes that the claimant left her employment voluntarily with good cause attributable to the employer and, as a consequence, she is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant provided she is otherwise eligible.

Iowa Code section 96.3-7 provides:

> 7. Recovery of overpayment of benefits. 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.
>
> 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.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of $1,897.00 since separating from the employer herein on or about September 16, 2005 and filing for such benefits effective September 18, 2005. The administrative law judge further concludes that that the claimant is entitled to these benefits and is not overpaid such benefits.

DECISION:

The representative's decision of October 17, 2005, reference 01, is affirmed. The claimant, Debra L. Mormann, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, because she left her employment voluntarily with good cause attributable to the employer. As a result of this decision the claimant is not overpaid any unemployment insurance benefits arising out of her separation from the employer herein.

dj/kjw