

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUBY A MORIN MALDONADO

Claimant

APPEAL NO. 10A-UI-05444-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COUNCIL BLUFFS COMM SCHOOL DIST

Employer

OC: 03/07/10

Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit

Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Council Bluffs Community School District filed a timely appeal from a representative's decision dated March 30, 2010, reference 01, holding claimant eligible to receive unemployment insurance benefits upon a finding that the claimant quit work because of detrimental working conditions. After due notice, a telephone hearing was held on July 7, 2010. The claimant participated personally. Participating on behalf of the claimant was her attorney, Mr. John Kocourek. The employer participated by Ms. Lynn Corbeil, Attorney/Hearing Representative TALX UCM Services Inc. and witnesses Janet Reiners, Executive Director and Ms. Nicole Smith, Human Resource Generalist. Employer's Exhibit 1 was received into evidence.

ISSUES:

At issue is whether the claimant left employment with good cause attributable to the employer and whether the claimant has been overpaid job insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Ruby A. Morin Maldonado was employed by the Council Bluffs Community School District as a full-time special education paraprofessional from the fall of 2007 until February 5, 2010, the effective date of her resignation from employment. The claimant was paid by the hour. The supervisor was Janet Reiners, Executive Director.

In her position as a special education paraprofessional the claimant was assigned to assist a special education student. During the course of her duties Ms. Morin Maldonado observed a number of incidents that were of concern to her. The claimant observed conduct by a teacher that she thought jeopardized the wellbeing of the special education child assigned to Ms. Morin Maldonado and the claimant began documenting occurrences. Ms. Morin Maldonado brought her concerns to the attention of the school's assistant principal and in October of 2009 the claimant went to the executive director, Janet Reiners to verbally inform Ms. Reiners of what she had observed. Although the claimant had kept a journal of the teacher's alleged conduct the claimant was not willing to disclose its contents.

The district immediately began to investigate Ms. Morin Maldonado's allegations and within a few days the teacher in question was placed upon administrative leave and was no longer at the facility where the claimant and the special education child were assigned. The claimant and special education student were also assigned to a different facility part time.

In mid January 2010 the claimant verbally gave notice to Jim Darmody, the assistant principal, that she had found other employment. Mr. Darmody requested that the claimant submit the resignation in writing. On January 29, 2010 Ms. Morin Maldonado gave her two-week notice in writing citing only "personal reasons" as her reason for leaving employment. In a separate conversation with Ms. Reiners at that time, the claimant stated that she was leaving to "take a new job" although the claimant stated that the new job paid better she declined to further identify it. In a separate conversation with Nicole Smith, a human resource generalist for the district, the claimant stated that she was quitting because she "had another job." Ms. Morin Maldonado did not state any other reasons for leaving to Ms. Reiners or Ms. Smith.

After the claimant had submitted her resignation on January 29, 2010 she was informed on February 2, 2010 that she need not report back to work for the remaining three days of her notice period. The claimant was paid through the end of the notice period but her services were not needed as the special education child assigned to her would not be participating in Special Olympics that week.

It is the claimant's position that she left because she felt threatened by the teacher she had reported and believed that her report had caused hostility from other teachers and administrators. The claimant also believed the school administration was not being responsive to her complaints. Prior to leaving employment the claimant did not bring these matters to the attention of the school district or indicate that she would have to leave employment if her concerns were not addressed.

The claimant filed a claim for unemployment insurance benefits effective March 7, 2010 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntarily separation from employment qualifies her to receive unemployment insurance benefits.

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.

The claimant quit her employment effective February 5, 2010 because she felt other teachers and administrators had a negative reaction to complaints about a teacher and because she felt threatened by the teacher who she had complained about. The claimant also believed that the school district's administration was not being responsive to her complaints. The claimant contends she quit her employment due to intolerable or detrimental working conditions. Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based upon medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

The evidence does not establish the working conditions were detrimental or intolerable. The employer had immediately began investigating Ms. Morin Maldonado's allegations as soon as they were made. Within three to four days the teacher that the claimant had identified had been placed upon administrative leave and was no longer at the facility. Ms. Morin Maldonado was aware that the community school district was investigating the allegations and that the teacher had been placed on leave.. In addition, the claimant and the special education child assigned to her were assigned to a different facility in a portion of a school week. If Ms. Morin Maldonado was concerned because she believed that other school employees may have disagreed or resented her actions, the evidence does not show that the claimant adequately brought these concerns to the attention of the school district management prior to leaving. The evidence in the record establishes that the claimant had personal conversations with a member of the district's human resource department and with the district's executive director, but cited only her desire to take new employment as her reason for leaving. Although questioned at length the claimant could not provide specific examples of statements or actions by school employees that created the level of hostility or resentment sufficient to create an intolerable work environment. A "good cause" reason for leaving employment must be that which is reasonable to the average person, not to an overly sensitive individual or a particular claimant. Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (Fla. App. 1973).

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). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991).

Inasmuch as the claimant did not give the employer an opportunity to resolve her complaints prior to leaving employment and stated only a generalized reason for leaving employment, the separation was without good cause attributable to the employer. Benefits are denied.

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.

DECISION:

The representative's decision dated March 30, 2010, reference 01, is reversed. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until such time as the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, providing that the claimant is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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