IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JOYCE A HACKETT
PO BOX 232
FORT MADISON IA 52627

AREA EDUCATION AGENCY #16
3601 W AVE RD
PO BOX 1065
BURLINGTON IA 52601-1065

Appeal Number: 05A-UI-11696-RT
OC: 10/23/05 R: 04
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Dr. Joyce A. Hackett, filed a timely appeal from an unemployment insurance decision dated November 9, 2005, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on December 5, 2005, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where she or any of her witnesses could be reached for the hearing, as instructed in the notice of appeal. Mr. Greg Manske, Business Manager, and Dr. Jeff Hamarstrom, Director of Special Education, participated in the hearing for the employer, Area Education Agency #16.

The claimant called the appeals section at 11:34 a.m. on December 5, 2005, and spoke to the administrative law judge. The administrative law judge explained to the claimant that he could

not now take evidence from her because the hearing had already been held when the record was opened at 11:04 a.m. and ended when the record was closed at 11:24 a.m. and the claimant had not called during that time. Although the claimant stated that she had called in a telephone number she could provide no control number nor could she explain why she had not called five minutes after the hearing was to start. The claimant stated that she was traveling to Des Moines for a job interview, but the claimant had never informed the administrative law judge of this or requested a continuance. Further, apparently the claimant could have called at five minutes after the time for the hearing because she did call al 11:34 a.m. The administrative law judge informed the claimant that he could not now take evidence from her but that he would consider her telephone call as a request to reopen the record and reschedule the hearing made after the record had been closed and the hearing held. The following rule is applicable:

871 IAC 26.14(7) provides:

> (7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.
>
> a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.
>
> b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.
>
> c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The administrative law judge concludes that there is insufficient evidence that the claimant actually called the proper telephone number of the appeals section to report the telephone number where she could be reached for the hearing. The claimant had no control number and further had no explanation as to why she didn't call within five minutes after the time for the hearing as she would have been instructed to do if she had called in a telephone number. Accordingly, the administrative law judge concludes that the claimant has not demonstrated good cause to reopen the record and reschedule the hearing. Therefore, the administrative law judge concludes that the claimant's request to reopen the record and reschedule the hearing is hereby denied.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer, most recently as a coordinator of instructional services, from August 18, 2000 until she voluntarily quit effective June 30, 2005. The claimant wrote the employer a letter dated February 10, 2005, indicating that she was resigning her position effective at the end of her contract on June 30, 2005. This letter was written to the employer's witness, Dr. Jeff Hamarstrom, Director

of Special Education. Her resignation was accepted by the employer. The claimant's letter of resignation did not specifically state why she was quitting. However, earlier in February of 2005, Dr. Hamarstrom had informed the claimant that there was a very strong possibility or likelihood that her position was going to be eliminated due to some restructuring of the employer's special education area. Although at the time it was only a possibility, it became more certain as the spring progressed. The claimant was informed by Mr. Hamarstrom that it would be a very strong possibility that that position would be eliminated. The employer was going to offer the claimant another position but it would involve substantially different duties and a substantial reduction in her pay, as much as $10,000.00 per year. The claimant expressed concerns to Mr. Hamarstrom when she was informed of this restructuring and the elimination of her position and although she did not specifically indicate that she would quit, Mr. Hamarstrom had the feeling that the claimant would do so. The claimant did quit. The employer does not wish to contest the claimant's unemployment insurance benefits, even though it is a reimbursable employer.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was 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(1) 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:
>
> (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The employer's witnesses credibly testified, and the administrative law judge concludes, that the claimant left her employment voluntarily effective June 30, 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 the claimant did not participate in the hearing, the administrative law judge nevertheless concludes that there is a preponderance of the evidence that the claimant left her employment voluntarily with good cause attributable to the employer. The employer's witnesses credibly testified that the claimant's position was going to be eliminated due to a restructuring of the employer's special education area and that this was going to cause a change in her position involving a substantial change in her duties and further

involve a substantial reduction in her pay, as much as $10,000. The claimant was first informed of this restructuring and the elimination of her position in early February of 2005. At that time, although it was only a possibility, it was a very strong possibility, and the claimant was informed that this would probably happen. This prompted the claimant to resign. At the time the claimant was informed of this restructuring, she expressed concerns to the employer, leaving the employer with a definite feeling that she was going to quit. Nevertheless, the employer found it necessary to restructure and this became more certain as time progressed. The restructuring was not due to any problems or fault of the claimant but as an internal reorganization by the employer. Accordingly, the administrative law judge concludes that the elimination of the claimant's position and the offer of a different position involving substantially different duties and a substantial reduction in pay was a willful breach of the claimant's contract of hire by the employer, which breach was substantial involving modification of type of work and remuneration. Therefore, 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.

DECISION:

The representative's decision of November 9, 2005, reference 01, is reversed. The claimant, Dr. Joyce A. Hackett, 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.

dj/kjw