IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

LORI J THORSON
Claimant

HOLZHAUER MOTORS LTD
Employer

APPEAL NO. 15A-UI-03909-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/01/15
Claimant: Respondent (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Holzhauer Motors (employer) appealed a representative's March 20, 2015 (reference 01) decision that concluded Lori Thorson (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 7, 2015. The claimant participated personally. The employer participated by Jessica Alesch, Controller; Daniel Winchell, Owner; and Eugene Fischer.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 21, 2013 as a full-time service assistant in the service department. In March 2014, the claimant became an office worker. She was a receptionist, title clerk, and cashier. She handled warranty claims and accounts receivable. She trained with the woman who worked there for 30 years, as well as two other women. They all taught her different ways to do things. When she did not learn the job quickly, a few women called her "fucking stupid". For a time the employer allowed her to work in a quiet area for part of her shift so she could concentrate on her work. Later the employer put her at a front desk helping customers, answering the telephone, balancing figures, and making deposits; while co-workers discussed sports and sexual topics around her. The employer told her she was not to participate in the office talk because she was making mistakes. Other employees who made mistakes were not under the same restrictions. The claimant understood she was to face the corner and not allowed to participate in co-worker conversations.

In January 2015, the claimant moved across the room to help a male co-worker lift a scanner off the floor. A female co-worker's hand or arm struck or shoved the claimant when the co-worker tried to bar the claimant from helping. The claimant told the owner immediately about the hostile work environment. The owner saw it and acknowledged that it just happened. The controller saw it and recognized the co-worker was at fault. The owner started but did not finish the investigation as of the date appeal hearing.

On September 12, 2014, the employer issued the claimant a verbal warning for failing to follow instructions and making errors. The claimant signed for receipt of the employer's handbook on September 29, 2014. On January 1, 2015, the employer issued the claimant a written warning for putting the wrong amount of money in the deposit bag to go to the bank. On February 23, 2015, the employer issued the claimant a written warning for errors in documentation and not balancing daily. The claimant disputed this warning because not all the errors were made by the claimant. Some numbers were transposed by the claimant who has dyslexia. Some were transposed by other workers. The employer notified the claimant that further infractions could result in termination from employment. On February 24, 2015, the employer had two warnings to give the claimant for receipt errors and the deposit not balancing. The claimant did not sign that she received the two warnings. The employer notified the claimant that further infractions could result in termination from employment.

On March 2, 2015, the owner sat down to talk with the claimant about her job. He asked her what job she thought she could perform without making mistakes. The claimant wanted to know what the owner was telling her because she could not afford to quit. The owner told her he needed her to concentrate on her work. The claimant discussed the hostile work environment and being shoved by her co-worker. She said she was not taking it anymore and walked out.

The claimant filed for unemployment insurance benefits with an effective date of March 20, 2015. The employer participated personally at the fact-finding interview on March 17, 2015 by Jessica Alesch.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant voluntarily quit work with good cause attributable to the employer.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.26(4) 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:
>
> (4) The claimant left due to intolerable or detrimental working conditions.

The law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that she intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. Hy-vee, Inc. v. Employment Appeal Board and Diyonda L. Avant, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The claimant notified the employer of the

hostile work environment in January 2015. The owner did nothing to finish the investigation. In addition, the claimant was called names and working in conditions where she was being treated differently than her co-workers. She was not allowed to talk when she made mistakes. The co-workers made mistakes and engaged in office banter. The claimant subsequently quit due to those conditions. The claimant is eligible to receive unemployment insurance benefits.

In the alternative, the claimant was not discharged for misconduct.

Iowa Code § 96.5-2-a provides:

> An individual shall be disqualified for benefits:
>
> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
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> a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
>
> a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.
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> This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. Huntoon v. Iowa Department of Job Services, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance was a result of her lack of adequate training, area to work without distractions, and dyslexia. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's March 20, 2015 (reference 01) decision is affirmed. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

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