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

MARY L WHITNEY
PO BOX 182
ALBANY IL 61230

BLUE RIDGE PAPER PRODUCTS INC
DAIRY PAK DIVISION
C/O GARY WILLIAMS
PO BOX 4000
CANTON NC 28716-4000

Appeal Number: 05A-UI-12218-RT
OC: 11-13-05 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, Mary L. Whitney, filed a timely appeal from an unemployment insurance decision dated December 2, 2005, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on December 19, 2005, with the claimant participating. Glory Weavengay was available to testify for the claimant but not called because her testimony would have been repetitive and unnecessary. Kathleen Harbron, Human Resources Representative for the employer's Clinton, Iowa, location, where the claimant was employed, participated in the hearing for the employer, Blue Ridge Paper Products, Inc., Dairy Pak Division. Claimant's Exhibit A was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department of unemployment insurance records for the claimant.

At 4:38 p.m. on December 15, 2005, the claimant spoke to the administrative law judge and requested that the hearing start at 3:45 p.m. instead of 3:00 p.m. because the claimant had a full time job. The administrative law judge informed the claimant that he would start the hearing at 3:45 p.m. The administrative law judge then called the employer and left a message for the employer's witness, Ms. Harbron, at 4:43 p.m. on December 15, 2005, informing Ms. Harbron that the hearing would begin at 3:45 p.m. instead of 3:00 p.m. unless Ms. Harbron could not do the hearing at 3:45 p.m. in which case she should call the administrative law judge. Ms. Harbron did not call the administrative law judge prior to the hearing and participated in the hearing which started at 3:48 p.m. when the record was opened.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Claimant's Exhibit A, the administrative law judge finds: The claimant was employed by the employer as a full time sealer inspector from October 24, 2000 until she voluntarily quit effective November 11, 2005. On that day the claimant called Collin Calsyn and told him that she was quitting. The claimant quit because the employer had gone to a "continuous twelves" which required that the claimant work full time from 6:00 p.m. to 6:00 a.m. for four days then off work for a period of time and then work twelve hours during the day time and then be off for a few days and then rotate back to the night shift. Previously the claimant's hours had been working two weeks on the day shift from 7:00 a.m. to 3:00 p.m. and then two weeks for the second shift from 3:00 p.m. to 11:00 p.m. Beginning on August 20, 2004, until the "continuous twelves" went into effect on or about October 17, 2005, the claimant rotated every two weeks between three shifts: 11:00 p.m. to 7:00 a.m., 3:00 p.m. to 11:00 p.m., and 7:00 a.m. to 3:00 p.m. As soon as the employer switched to the three shifts including a night shift from 11:00 p.m. to 7:00 a.m. the claimant expressed concerns to the employer and then continued to do so when the employer went to "continuous twelves." However, the hours were not subject to change and the claimant either had to work those hours or quit. The claimant developed severe anxiety and depression problems because of the change in her hours, in particular the night shift work. Although this condition was caused by a chemical imbalance and heredity, it was exacerbated by the late night hours the claimant was required to work. The claimant expressed concern on several occasions to the employer's witness, Kathleen Harbron, Human Resources Representative at the employer's Clinton, Iowa, location where the claimant was employed, and indicated that she would have to quit if those hours were required. The hours were required and the claimant quit. Ms. Harbron tried to help the claimant but there appeared to be no relief for the claimant. The claimant's physician wrote out a statement as shown at Claimant's Exhibit A indicating that her medical condition prohibited her from working the 6:00 p.m. to 6:00 a.m. shift.

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), (6)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:
>
> (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.
>
> (6) Separation because of illness, injury or pregnancy.
>
> 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 on November 11, 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. The administrative law judge concludes that the claimant has met her burden of proof 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 claimant credibly testified that she left her employment because of a change in the hours of her shift as set out in the Findings of Fact. The claimant credibly testified that she could not work the night shift especially the night shift under the “continuous twelves” requiring that the claimant work four days in a row from 6:00 p.m. to 6:00 a.m. This is confirmed by the claimant’s doctor’s statement at Claimant’s Exhibit A. Previously the claimant had not had to work the night shift until August 20, 2004 and then only from 11:00 p.m. to 7:00 a.m. and then only every two weeks. Under the “continuous twelves” the claimant would work four days from 6:00 p.m. to 6:00 a.m. then be off for a couple of days and then work four days during the day shift and be off a couple of days and then return to the 12-hour night shift. The claimant expressed concerns to the employer on a number of occasions concerning the night shift and in particular

the “continuous twelves.” There is nothing the employer could do about it because those were the shifts required of the claimant.

On the record here, the administrative law judge concludes that the change in the shifts was a willful breach of the claimant’s contract of hire by the employer which breach was substantial involving changes in working hours and shifts. Further, the administrative law judge concludes that the change in hours exacerbated the claimant’s anxiety and depression condition which compelled her to leave her employment. The claimant presented competent evidence at Claimant’s Exhibit A showing adequate health reasons to justify her quit and presented evidence, confirmed by the employer’s witness, that she informed the employer of the work related health problem and indicated to the employer that she would have to quit unless the problem was corrected. The problem could not be corrected and the claimant quit. Accordingly, the administrative law judge concludes that both the claimant’s illness exacerbated by her employment and the change in her contract were good cause attributable to the employer. Therefore, the administrative law judge concludes that the claimant left her employment voluntarily effective November 11, 2005, 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 December 2, 2005, reference 01, is reversed. The claimant, Mary L. Whitney, 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.

kkf/kjw