IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CHRISTINE WOODWARD
Claimant

KITTEN LITTLE PAWS
Employer

APPEAL NO. 11A-UI-04032-W

ADMINISTRATIVE LAW JUDGE DECISION

OC: 1/30/11
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a fact-finding decision dated March 18, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, in-person hearing was scheduled for and held on May 6, 2011. The parties were unable to complete the hearing on said date so the matter was continued until June 10, 2011. Claimant participated in both proceedings. Employer participated on both dates through Cathy Nguyen, the Director and owner of Kitten Little Paws. Jodi Hazle, lead supervisor, testified for the employer. Employer Exhibits A through O were admitted into evidence. Exhibit P was excluded as duplicative. Claimant Exhibits 1 through 11 were admitted into evidence.

ISSUES:

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds as follows. Claimant was a full-time teacher for the employer, a childcare provider. She began working for the employer in March 2006. She gave her two-week notice one January 31, 2011. Her last day worked was February 11, 2011.

The employment relationship between Ms. Woodward and her employer, Cathy Nguyen deteriorated in January 2011. The two had been friends prior to this deterioration. There were several significant issues which came to a head during this timeframe. Ms. Woodward had two children, Brody, three and Charlotte, two who attended the center and Ms. Nguyen had a grandchild who attended the center.

On January 28, 2011, Ms. Woodward and Ms. Nguyen had a significant argument which centered on both Ms. Woodward's work performance as well as issues surrounding her son, Brody. A portion of the discussion is recorded and in the record. *See* Employer's Exhibit A. During the course of the discussion, Ms. Nguyen disciplined Ms. Woodward for leaving the children in her classroom unsupervised and for being tardy. Employer's Exhibit B. Also during

that meeting, Ms. Nguyen terminated the childcare relationship with one of claimant's children, Brody, because of disruptions in the center related to the familial relationship. On the same date, Ms. Nguyen communicated with Brody's father and informed him of the separation as well. Ms. Nguyen provided Brody's father with personnel information about Ms. Woodward.

On January 31, 2011, Ms. Woodward showed up for work a few minutes late. The employer claimed that she was 15 minutes late and gave her a three-day suspension for tardiness. Employer's Exhibits C and D. However, a review of the employer's own time records demonstrate that the claimant was four minutes late since she was scheduled to be at work at 8:30 a.m. and she clocked in at 8:34 a.m. Employer's Exhibits E and K.

These disputes had a tendency to exacerbate other underlying employment issues between the parties. The claimant sincerely believed she was entitled to yearly raises, or, at a minimum, a yearly review. She believed that her hours had been cut over a period of time in an unfair manner. She complained that other employees had set schedules while she was usually the first teacher sent home. Both parties submitted wage records over a long period in an effort to prove their versions of the events.

REASONING AND CONCLUSIONS OF LAW:

At the outset, it should be noted that this is a close case and was, by no means, an easy decision. After reviewing all of the evidence as a whole, the administrative law judge holds that the evidence established that claimant voluntarily quit for good cause attributable to the employer for the following reasons.

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:

> … The following are reasons for a claimant leaving employment with good cause attributable to the employer.
>
> 24.26(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 workers' 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 the type of work, etc. ….
> ….
> 24.26(4) The claimant left due to intolerable or detrimental working conditions.

Where a worker has multiple reasons for quitting, the reasons must be assessed together. Even if, singly, they would not be good cause, combined, they may be. McCunn v. Employment Appeal Board, 451 N.W.2d 510 (Iowa App. 1989).

In this case, Ms. Woodward had several reasons for quitting her job. Those reasons are generally summarized in her resignation letter. Emp. Ex. N. Any of those reasons taken

individually probably would not be considered "good cause attributable to the employer." When viewed as a whole, however, it is found there is good cause.

This fact pattern presents certain unusual circumstances which seem unlikely to arise in many cases. The claimant and the employer were friends at one time. The claimant had children who attended the daycare where she worked. The employer had a grandchild the same age as claimant's oldest child. Ms. Nguyen testified that she treated Ms. Woodward's children like her own grandchildren. Both parties were emotional and animated at times during the hearing.

The problems between the parties escalated quickly and dramatically at the end of January. On January 28, 2011, Ms. Nguyen disciplined the claimant for being late to work and leaving children unattended, including her own child. The claimant believed that this discipline amounted to harassment and "bullying." In fact, it is found that the allegation that the claimant left children unattended in violation of employer practice and policy is not well-founded. Other staff members were frequently unavailable to provide coverage. It is the finding of the undersigned that the claimant did not engage in conduct which warranted discipline in this regard.

During the same meeting, Ms. Nguyen terminated the childcare relationship with Ms. Woodward's oldest child, Brody because of problems in the center. In summary, it was felt that Brody would not listen to other teachers because his mother worked in the center. Ms. Nguyen even suggested that it was not safe for Brody to continue to attend the center. She even testified that she believed the real reason Ms. Woodward quit was because of the termination of Brody.

Ms. Nguyen's grandchild competed in some sense with Brody for certain privileges in the center. For example, when there were too many children in the class for the younger students' classroom, the oldest available student was supposed to move to the higher class, which was seen as a privilege. During the period of time when Brody was the oldest child, he was sometimes not allowed to move up to Ms. Woodward's class because of the familial relationship. Instead, Ms. Nguyen's grandchild would move up (who was not the next oldest child). Ms. Nguyen seemed irritated by the problems caused by Ms. Woodward and her son, and specifically the instances when Ms. Woodward would remove Brody from his regular classroom. Even Ms. Hazle conceded that the fact that Ms. Woodward also worked at the center "complicated" the issues with Brody.

The termination of the childcare relationship in this matter is a significant factor in the outcome of the decision. It is particularly important that during the same meeting in which the employer provided significant discipline, one of claimant's children was terminated from the center. Ms. Woodward was technically both an employee and a customer of the center but this line was blurred by the employer during her disciplinary meeting. It was further blurred when she communicated with Brody's father and provided certain personnel information to him, specifically Ms. Woodward's attendance sheet which is a personnel record. Employer's Exhibit D. Ms. Woodward has a reasonable expectation that such a record would be kept confidential.

Ms. Woodward was then 4 minutes late on Monday, January 31, 2011. The employer repeatedly incorrectly insisted that she was 14 or 15 minutes late. Nevertheless, it was certainly within the employer's right to discipline Ms. Woodward for being late. Ms. Woodward had just been disciplined on January 28, 2011. While it was within the employer's right to take this action, it was also likely motivated in part, by the dispute with Ms. Woodward as a customer of the center.

After being suspended, Ms. Woodward quit. In her resignation letter, she summarized all of her reasons for quitting. She included all of the foregoing reasons which summarized the disputes which began on January 28. She also included the concerns about her pay and hours, as well as the employer's failure to give annual reviews.

The pay and hour reasons, on their own, would not amount to good cause attributable to her employer. A full review of Ms. Woodward's pay records fail to establish that there was a significant reduction in her hours by the employer. Her hours did tend to go down over time, but it has not been established that the employer is entirely responsible for the decline. The employer, however, did not provide annual reviews as promised in the Employee Handbook. It was generally understood by the staff that if the center was financially successful and the employee's review was good, the employee would receive a raise. Ms. Nguyen testified that she did not give the employees reviews because she knew she could not afford raises and she felt it was "hard to give reviews" when she knew she could not give raises.

Again, by itself, this basis would not amount to a "change in the contract of hire." However, when this factor is considered with all of the other factors present, it is found that the claimant quit due to intolerable or detrimental working conditions.

DECISION:

The fact-finding decision dated March 18, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Joseph L. Walsh
Administrative Law Judge

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Decision Dated and Mailed

jlw/css