IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JENNIE P HALVERSON
Claimant

QCSS INC
Employer

APPEAL NO. 13A-UI-03422-VST

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/11/12
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from the representative's decision dated March 19, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice was issued, a hearing was held by telephone conference call on April 23, 2013. The claimant participated personally. The employer participated by Isaac Ryland, the vice president of operations. The record consists of the testimony of Jennie Halverson and the testimony of Isaac Ryland.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer; and

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The employer is engaged in telemarketing. The claimant worked at the employer's call center located in Monona, Iowa. The claimant began her training on July 9, 2012. Her first day of actual work was July 27, 2012. The claimant's last day of work was October 17, 2012. She went on her break and never came back. The employer considered her to have voluntarily quit when she failed to return to work either that day or the following two days.

The incident that led to the claimant quitting her job was that she was yelled at by a supervisor after she made a mistake on a call. The claimant did do something wrong but she felt embarrassed when she was yelled at in front of all the other employees. The claimant also felt that the manager "played favorites" and that it was unprofessional to allow children in the call center. The employer did allow employees to bring children to work on occasion because parents had limited resources for child care in the small town and the employer wanted to assist these employees, many of whom came from broken families.

The employer wanted the claimant to return to work because she was a good employee. The parties dispute on whether the claimant was contacted by the employer after she walked off the job. The claimant said that she would have returned to work had she known the employer did not want her to quit.

REASONING AND CONCLUSIONS OF LAW:

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 24.25(21) and (22) provide:

> Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
>
> (21) The claimant left because of dissatisfaction with the work environment.
>
> (22) The claimant left because of a personality conflict with the supervisor.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The claimant is not eligible for unemployment insurance benefits. The evidence is uncontroverted that the claimant quit her job. She admitted that she quit her job. The issue is whether the claimant quit for good cause attributable to the employer. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code section 96.6-2. She voluntarily quit her employment on October 19, 2012 due to what she deemed a hostile work environment. 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.

The evidence provided by the claimant does not rise to an intolerable or detrimental work environment. "Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (Florida App. 1973). The claimant cited one and possibly two instances where she was criticized by the employer. The

incident that caused the claimant to leave her job was when she was yelled at in front of the entire call center. This may indeed have not been the best way to handle the claimant's mistake but one instance of poor management does not make the workplace hostile. No one likes to be critiqued in the workplace, particularly in front of one's peers. But an employer does have the right to make sure its policies are being carried out by its employees. Criticism is a part of everyone's job experience.

The claimant also felt it was unprofessional to have children in the workplace. Once Mr. Ryland explained why this was the policy, she seems to have conceded the point, at least in part. She also felt that the employer played favorites, but again this had to do with reading on the job. Reading on the job is prohibited The policy may not have been enforced to the claimant's liking, but this also does not make this workplace hostile. Finally, the claimant said that if the employer had contacted her she would have returned to work. If the workplace was truly intolerable, it makes no sense that the claimant would have returned to work if she had been asked to do so. The claimant has, therefore, failed to show intolerable or detrimental working conditions. Benefits are denied.

The next issue is overpayment of benefits.

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.

The overpayment issue is remanded to the Claims Section for determination.

DECISION:

The unemployment insurance decision dated March 19, 2013, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The overpayment issue is remanded to the Claims Section for determination.

_____
Vicki L. Seeck
Administrative Law Judge

_____
Decision Dated and Mailed

vls/css