BEFORE THE EMPLOYMENT APPEAL BOARD Lucas State Office Building Fourth floor Des Moines, Iowa 50319

GAIL A THOMPSON Claimant,	- - - - -	HEARING NUMBER: 14B-UI-09626
and FIELDING FUNERAL HOMES INC		EMPLOYMENT APPEAL BOARD DECISION

Employer.

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Gail A. Thompson, worked for Fielding Funeral Homes, Inc. from May 8, 2014 through June 3, 2014 as a full-time office assistant. (10:15-10:30; 18:05-18:42; 21:24-21:33) The Claimant had a job interview with another place of employment after being hired by the Employer. The Employer spent a lot of time and money training Ms. Thompson in the business. (24:22-24:24) She experienced difficulty catching on to the job (34:52-35:10), as it involved more that she expected. The Employer became very concerned about the Claimant's interviewing for other jobs (24:14-24:37), especially after she previously indicated she enjoyed being there and felt it was a good fit. (20:27-20:48; 24:38-24:44)

On June 3, 2014, the Employer asked the Claimant if she was happy with her job to which she responded that she was not. (23:24-23:37) She then told the Employer that she would probably move back to Wisconsin. (23:38-23:42) Ms. Thompson told the Employer that she had another interview with another employer. (36:53-37:02) The Employer had continued work available if she stayed. When the Claimant didn't get the job she interviewed for, she told the Employer would work 100% (37:00-37:08) if he let her stay to which he refused because he felt he could no longer trust her. (11:58-12:39: 11:46-12:23)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) (2013) provides:

An individual shall be disqualified for benefits: *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 provides:

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...

(3) The claimant left to seek other employment but did not secure employment.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code §96.6(2) (amended 1998).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Employer's version of events. The Employer provided credible testimony Ms. Thompson indicated she disliked the job, and intended to move back to Wisconsin. Additionally, she took measures to sever her relationship when she interviewed for other employment. "[Q]uitting requires an intention to terminate employment accompanied by an overt act carrying out the intent." <u>FDL Foods, Inc. v. Employment Appeal Board</u>, 460 N.W.2d 885, 887 (Iowa App. 1990), <u>accord Peck v. Employment Appeal Board</u>, 492 N.W.2d 438 (Iowa App. 1992).

Just because the Claimant was unsuccessful in securing other employment from that last interview, and subsequently sought to return to Fielding Funeral Home, does not detract from the nature of her separation. For all intents and purposes, Ms. Thompson had already tendered her resignation when she expressed that she was moving back to Wisconsin and told the Employer she was going to another interview. The court in Langley v. Employment Appeal Board, 490 N.W.2d 300 (Iowa App. 1992) held that the employer is under no obligation to accept an employee's withdrawal of their resignation. The idea being that the employer should be able to adjust their workforce as needed, and could not be bound to wait for indecisive employees to determine whether or not they were really going to quit.

Based on this record, the Claimant initiated her own separation from employment, and has failed to satisfy her burden of proof. See, 871 IAC 24.1(113) "b."

DECISION:

The administrative law judge's decision dated October 7, 2014 is **REVERSED**. The Employment Appeal Board concludes that the claimant voluntarily quit her employment without good cause attributable to the Employer. Accordingly, she is denied benefits until such time she has worked in and was paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(1)"g".

Kim D. Schmett

Ashley R. Koopmans

AMG/fnv