

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

YAN CHEN
Claimant

APPEAL NO. 12A-UI-09908-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PIONEER HI-BRED INTERNATIONAL INC
Employer

OC: 07/08/12
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Pioneer Hi-Bred International Inc. filed a timely appeal from a representative's decision dated August 8, 2012, reference 01, which held the claimant eligible to receive unemployment insurance benefits finding that the claimant was forced to quit or be discharged. After due notice was provided, a telephone hearing was held on September 12, 2012. The claimant participated. The employer participated by James Presnail, Senior Research Manager. Official interpreter was Ms. Helen Lee.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record, finds: Ms. Yan Chen was employed by Pioneer Hi-Bred International Inc. from April 15, 2001 until July 7, 2012 when Ms. Chen voluntarily left her employment in anticipation that she would receive disciplinary action for poor work performance. Ms. Chen was employed as a full-time research associate and was paid by the hour. Her immediate supervisor was Joe Zhao.

On May 1, 2012, Yan Chen was placed on a performance improvement plan based upon complaints from a number of employees that indicated that Ms. Chen was not following proper protocol in the performance of her duties and that the claimant's communication and interaction with her peers were having a negative impact on the team's work. The claimant was given a list of performance concerns and examples and the employer's expectations. (See Employer's Exhibit One).

Based upon the employer's conclusion that Ms. Chen was not meeting the employer's performance improvement expectations and the claimant's denials that there were any problems with her work, the employer offered Ms. Chen the option of continuing to be employed, but indicated that future unsatisfactory performance could result in progressive discipline and might in the future result in termination. The employer also offered a second alternative which offered Ms. Chen the option of offering her resignation with an effective date of the claimant's leaving to be three months later. The employer's intention was to allow the

claimant three months of continued employment to look for a new position within the company or a new job with another employer.

Ms. Chen considered the matter and initially decided to provide her resignation to be effective September 1, 2012. After taking two weeks off work Ms. Chen returned and resigned immediately effective July 7, 2012 stating no reason for leaving at that time.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether Ms. Chen left her employment in lieu of being discharged effective July 7, 2012. She did 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.

The evidence in the record establishes that Ms. Chen was not given the option of being discharged or resigning effective July 7, 2012. The employer had previously worked with Ms. Chen placing her on a performance improvement plan for a one-month period beginning May 1, 2012. It is the employer's hope that Ms. Chen would improve her work performance and the manner that she interacted with other employees. When it became evident to the employer that Ms. Chen was not meeting the goals of the performance improvement plan and that the claimant was continuing to deny that there was any work-related problems, the employer concluded that Ms. Chen would soon become subject to the company's progressive disciplinary procedures as the company could not allow the claimant to continue to perform her duties in an unacceptable manner. Company policy required that progressive discipline be utilized.

When given the option of being subjected to progressive discipline for her poor performance, Ms. Chen elected initially, to avail herself of a three-month grace period in which the company had promised not to begin progressive discipline, so that the claimant could attempt to find another position within the company or with a new employer. After considering the matter during a two-week period that she had requested to be off work, Ms. Chen decided to resign immediately upon her return effective July 7, 2012.

In this case the evidence establishes that Ms. Chen was not required to resign but was given the option of improving her performance and being subject to progressive discipline if she did not do so or in the alternative entering a 90-day grace period where the company promised not to invoke progressive discipline to allow the claimant to continue working while she sought a new position within or outside the company. For reasons that are unclear, the claimant changed her mind after initially indicating that she would remain in the 90-day grace period and elected to leave her employment immediately on July 7, 2012 while employment continued to be available to her. The administrative law judge concludes that the claimant did not resign in lieu of being discharged but resigned in anticipation that she might be subject to progressive discipline in the same manner as other employees and left in anticipation that she would be disciplined by the employer in the future.

While this may be a good cause reason from Ms. Chen's personal viewpoint, it was not a good cause reason attributable to the employer. The employer was reasonable in its belief that imposing progressive discipline may be appropriate in the future. The claimant did not adhere to the employer's reasonable work expectations.

For the reasons stated herein the administrative law judge concludes that the claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld.

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.

DECISION:

The representative's decision dated August 8, 2012 reference 01, is reversed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, and is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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