

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HARRIET E ALEXANDER
Claimant

APPEAL NO: 06A-UI-07438-D

**ADMINISTRATIVE LAW JUDGE
DECISION**

NCS PEARSON INC
Employer

OC: 08/07/05 R: 03
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Harriet E. Alexander (claimant) appealed a representative's July 11, 2006 decision (reference 01) a claim year beginning August 7, 2005 that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from NCS Pearson, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on November 14, 2006. The claimant participated in the hearing. The employer failed to respond to the hearing notice and appear at the time and place set for the hearing, and therefore did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on or about October 10, 1998. She worked on an hourly periodic basis as a temporary scoring director in the employer's Iowa City, Iowa education testing facility. Her last day of work was June 16, 2006.

The claimant had applied for employment when several permanent positions became available in the spring, but she had not been hired. She had sent an email to the manager of the scoring directors, Mr. Bassett, requesting to meet with him to discuss what would improve her hireability, but she had gotten no response. She suspected that the reason for her being turned down was her age, which would make her permanent employment more expensive.

In June 2006 the claimant was working on two major projects, one of which involved a group going to Minnesota for a meeting. On about June 5 one of the members of the group realized he had the wrong papers. While in the reception area the claimant commented to the receptionist, "Let him take care of his own damn mistakes." On June 16 the claimant was called

into the human resources offices with Mr. Bassett; he gave her a verbal warning, which he indicated would be written up, due to using "inappropriate language" in the reception area; he told her that it would be a "final warning." The claimant had not received any prior warnings for any issues. She responded that she did not understand why she was being given a final warning, and that she would just leave. Ms. Bassett responded, "That's your choice." The claimant then returned to her office, gathered her personal belongings, and left. She felt that she was being eased out because of her pursuit of a permanent position.

The claimant established an unemployment insurance benefit year effective August 7, 2005. She filed an additional claim effective June 18, 2006. Upon the expiration of the prior claim year, she established a new claim year effective August 6, 2006.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct.

Iowa Code § 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 claimant asserts that her separation was not "voluntary" as she had not desired to end the employment; she argues that it was the employer's action or inaction of issuing her an unmerited "final warning" and refusing to hire her on a permanent basis which led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 871 IAC 24.25 provides that, 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 rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment. 871 IAC 24.25.

871 IAC 24.25(27) 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 § 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 § 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:

- (27) The claimant left rather than perform the assigned work as instructed.

871 IAC 24.25(33) 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 § 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 § 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:

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

The claimant had not been told she was fired and continued work had been available for her; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). While the claimant's work situation was perhaps not ideal, she has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's July 11, 2006 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of June 16, 2006, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs