

administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Employer's Exhibit One was admitted into evidence.

The hearing was initially scheduled in this matter for October 3, 2005 at 3:00 p.m. and rescheduled at the employer's request. The administrative law judge spoke to the employer's attorney at 3:36 p.m. on September 28, 2005 about this postponement. The administrative law judge also suggested that the hearing be done by a TTY operator because the claimant is hearing impaired. The attorney agreed. The administrative law judge spoke with the claimant's mother at 4:10 p.m. on September 28, 2005 about the postponement and the use of a TTY operator and she agreed to the postponement and the use of a TTY operator. However, at the time for the hearing, the administrative law judge reached the TTY operator at 2:01 p.m. and the TTY operator called the claimant, but the claimant did not have a receiver for TTY. The claimant could access an interpreter's service for the hearing impaired through her computer. Eventually, the claimant accessed such an interpreter who then called the administrative law judge and the hearing began and all parties necessary participated. The operators involved in interpreting for the claimant changed periodically throughout the hearing.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit One, the administrative law judge finds: The claimant was employed by the employer, most recently as a full-time department manager for menswear, from August 19, 2002 until she voluntarily quit on August 29, 2005. The claimant quit because of alleged miscommunication or communication difficulties with another manager, Benita Prole who was manager of the department of boys' and girls' wear. The claimant alleged that on one occasion, on or about August 19, 2005, she asked Ms. Prole a question and Ms. Prole simply shrugged her shoulders. The claimant did not like to be kept confused and liked to be online and on plan. This was the only incident testified to by the claimant in which the claimant alleged miscommunication between her and Ms. Prole. The claimant did not have a problem with Ms. Prole other than a communication problem. The claimant is hearing impaired. The claimant had to ask other people to keep her up to date and they did so. On the occasion that the claimant asked Ms. Prole a question she wrote the question out on a piece of paper and showed it to Ms. Prole. Ms. Prole did not answer but merely shrugged her shoulders. This was the only incident that caused the claimant to quit.

On August 19, 2005, the claimant met with the assistant manager, Barbara Quigley, about some reports that she had to do. Ms. Quigley answered her questions. The claimant was scheduled to work on August 22, 23, and 24, 2005 but she did not work those days nor did she notify the employer. On August 25, 2005 Ms. Quigley called the claimant and learned the claimant was coming in to speak to the store manager. Ms. Quigley had been notified by Iowa Workforce Development that the claimant had applied for unemployment insurance benefits. When the claimant came into the store she was directed by the store manager to meet with Ms. Quigley. Their conversation in writing appears at Employer's Exhibit One. The claimant did say something to the effect of difficulty with Ms. Prole and Ms. Quigley told the claimant that the claimant should come to her with any problems related to Ms. Prole. Ms. Quigley indicated that the claimant had been absent for three days as a no-call/no-show but she was only going to get a verbal warning for this. The claimant was not told that she was fired or discharged and the claimant did not indicate to Ms. Quigley that she was going to quit over any matter including any miscommunication with Ms. Prole. The claimant then worked on August 25 and 26, 2005 without further incident. Then, on August 29, 2005, in the early morning hours, on or about

2:00 a.m., the claimant called and spoke to Jeff, the overnight assistant manager. The claimant told him that she was not coming to work anymore and basically that she was quitting.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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), (28) 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.

(28) The claimant left after being reprimanded.

The parties agree, and the administrative law judge concludes, that the claimant left her employment voluntarily on August 29, 2005. The issue then becomes whether the claimant left her employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The only reason given by the claimant for her quit was miscommunication or communication problems between her and the manager of the boy and girls' wear department, Benita Prole. The claimant testified to only one incident of miscommunication, on or about August 19, 2005 when the claimant asked Ms. Prole a question by writing it out and Ms. Prole did not answer but merely shrugged her shoulders. The claimant stated that she did not have a problem with Ms. Prole but only some miscommunication. The claimant testified that she did not like to be kept confused and that she liked to be online and on plan. The administrative law judge understands this. However, the claimant conceded that other people kept her up to date and that she only had one miscommunication incident with Ms. Prole. The administrative law judge repeatedly attempted to get at the reasons for the claimant's quit beyond miscommunication but the claimant was adamant that the only reason for her quit was miscommunication on one occasion with Ms. Prole. The administrative law judge concludes that one such incident does not really

establish miscommunication and certainly does not establish unsafe, unlawful, intolerable, or detrimental working conditions. There is also no evidence that the claimant was subjected to a substantial change in her contract of hire.

There were some misunderstandings here, much of which was on the part of the claimant. The claimant filed for unemployment insurance benefits effective August 21, 2005 but according to the claimant's testimony did not quit until August 29, 2005. In her written conversation with the employer's witness, Barbara Quigley, Assistant Manager, on August 25, 2005, the claimant states that she accepted responsibility for what she did in the wrong way. The evidence also establishes that the claimant was absent for three days in a row, August 22, 23, and 24, 2005, without notifying the employer. The claimant herself concedes to two days of absences on August 23 and 24, 2005 that she did not report to the employer. The evidence establishes that the claimant was merely going to get a warning for these absences. The administrative law judge must conclude on the record here, that the claimant quit because of the reprimand and because of dissatisfaction with her work environment but these are not good cause attributable to the employer. If the claimant had difficulties with the employer or any particular employee because of her hearing impairment, the claimant should have specifically set that out but she failed to do so. Further, there is no evidence that the claimant ever expressed any concerns to the employer about any co-worker until she spoke to Ms. Quigley on August 25, 2005 about Ms. Prole. Ms. Quigley thought that she had addressed the problem by telling the claimant that the claimant should come to her if she had problems and then giving the claimant only a warning for the three absences without proper reporting. The claimant worked that day and the next day, August 26, 2005 and then was off work until August 29, 2005 when she quit.

In summary, the administrative law judge is constrained to conclude on the record here that the claimant left her employment voluntarily on August 29, 2005 and has not demonstrated by a preponderance of the evidence that she did so because her working conditions were unsafe, unlawful, intolerable, or detrimental or that she was subjected to a substantial change in her contract of hire. The administrative law judge is also constrained to conclude that the claimant did not specifically express concerns to the employer or give the employer a reasonable opportunity to address her concerns before she quit. Therefore, the administrative law judge concludes that the claimant left work voluntarily without good cause attributable to the employer, and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

**DECISION:**

The representative's decision of September 12, 2005, reference 01, is affirmed. The claimant, Jennifer S. Kephart, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer.

kkf/kjf