

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CORLISS G WILLIAMS
505 – 36TH ST APT 503
DES MOINES IA 50312

DES MOINES UNIVERSITY
OSTOPATHIC MEDICAL CENTER
3200 GRAND AVE
DES MOINES IA 50312

Appeal Number: 04A-UI-02930-RT
OC: 02-08-04 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.4-3 – Required Findings (Able and Available for Work)

STATEMENT OF THE CASE:

The claimant, Corliss G. Williams, filed a timely appeal from an unemployment insurance decision dated March 8, 2004, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on April 6, 2004, with the claimant participating. The employer, Des Moines University Osteopathic Medical Center, provided no witnesses but had three witnesses available to testify, Becky Lade, Director of Human Resources; Bonnie Mattox, Administrative Assistant to the Dean of Podiatry; and Dr. Robert Yoho, Dean of the College of Podiatry. They were not called by the employer's attorney. The employer was represented by John Parmeter, Attorney at Law. The hearing began on April 6, 2004, when the record was opened at 10:03 a.m. and recessed at 10:59 a.m. because the hearing was not finished. A new hearing was scheduled with the agreement of the parties to be

reconvened at 9:00 a.m. on April 21, 2004. The hearing was reconvened at 9:02 a.m. on April 21, 2004, and the record was closed at 9:43 a.m., when the hearing was completed. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Employer's Exhibits 1 through 7 were admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, including Employer's Exhibits 1 through 7, the administrative law judge finds: The claimant was employed by the employer as a full-time academic secretary in the College of Podiatry from August 1, 1989 until she voluntarily quit on February 6, 2004. On February 5, 2004, the claimant went to the office of Becky Lade, Director of Human Resources, and informed her that she wanted to resign her position. Ms. Lade accepted that statement and determined that her effective date for the quit would be the next day, February 6, 2004. The claimant then resigned in writing on February 5, 2004, to be effective February 6, 2004, as shown at Employer's Exhibit 7. The claimant testified that she quit because she was under pressure from her new supervisor, Bonnie Mattox, Administrative Assistant to the Dean of Podiatry. The claimant testified that Ms. Mattox was "abusive" but could only provide examples of e-mails being sent and inquiries from doctors and being "shadowed" by her, meaning that the claimant's work was observed by Ms. Mattox. The claimant then testified that she believed that she was being harassed because of her age and race as an African-American, but the claimant could provide no specific evidence of any such harassment and the claimant never filed any complaint with the employer, although the employer has procedures for doing so. The claimant testified further that she had been assigned to Dr. Mahoney in 2001, against her wishes, but this relationship was not good from the beginning. The claimant then testified that the specific reason for her quit was that she was put on probation on or about February 3, 2004, and given a first letter of warning for her work performance, as shown at Employer's Exhibit 6. However, the claimant was not discharged at that time.

The employer believed that the claimant's work was inefficient and that she had an inability to transfer telephone calls, and that she would make mistakes in arranging appointments for doctors and encountering problems with the computer. The claimant would hang up when she transferred calls, assuming that the call had gone through.

The employer had put the claimant on notice of its displeasure with the claimant's work and her inefficiencies and errors. In a meeting on June 3, 2003, the minutes of which the claimant prepared, as shown at Employer's Exhibit 1, Dr. Yoho, Dean of the College of Podiatry, set out a number of complaints from the faculty about general work from the college. One of the claimant's problems was a difficulty in accuracy in her work. The claimant made errors in her work and this was called to the claimant's attention in her performance appraisal in the fall of 2003, as shown at Employer's Exhibit 2. Her productivity was also noted as below average, as was her knowledge of the job and her dependability. Similar criticism appeared in the claimant's performance evaluations for 1998 to 1999, 1999 to 2000, 2000 to 2001, and three different evaluations for 2001 to 2002, all as shown at Employer's Exhibit 3. A meeting was then held with the claimant on December 2, 2003 to review these matters, as shown at Employer's Exhibit 4. The claimant became defensive. There was a second meeting on January 16, 2004, with the claimant again about her work, as shown at Employer's Exhibit 5. These meetings culminated in the claimant's first warning, as noted above at Employer's Exhibit 6. The claimant then resigned without signing the warning and before being discharged. The claimant filed no grievance, as she could have for any of these matters. The claimant

never expressed any concerns about these matters until her exit interview of February 9, 2004, after she had resigned, and she never indicated or announced an intention to quit prior to her resignation.

After the claimant's resignation, the claimant has placed no restrictions on her ability or availability for work and is earnestly and actively seeking work by making two in-person job contacts each week.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is ineligible to receive unemployment insurance benefits because she is and was at material times hereto not able, available, and earnestly and actively seeking work. The claimant is not ineligible to receive unemployment insurance benefits for those reasons but is disqualified to receive unemployment insurance benefits as noted above.

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 24.26(2), (3), (4), (1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (2) The claimant left due to unsafe working conditions.
- (3) The claimant left due to unlawful working conditions.
- (4) The claimant left due to intolerable or detrimental working conditions.
- (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

871 IAC 24.25(21), (22), (28) 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. 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.

(28) The claimant left after being reprimanded.

871 IAC 24.26(6)b, (6)a provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The parties concede that claimant left her employment voluntarily. 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 of proof to demonstrate by a preponderance of the evidence the she 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 claimant testified that Bonnie Mattox was abusive, but the claimant could only cite as examples e-mails that were sent and inquiries from doctors and that she was "shadowed," meaning that she was observed. The administrative law judge does not believe that these are abusive but merely are actions by a supervisor and they do not establish abuse or that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental. The claimant also testified that she was harassed because of her age and race, but could offer no evidence of harassment for any of those reasons. The claimant also testified that her blood pressure went up but conceded that her doctor never said that she had to quit her employment, nor did the claimant ever establish that this condition was related to her employment with any competent medical evidence. Accordingly, the administrative law judge concludes that the claimant has not demonstrated by a preponderance of the evidence either that her working conditions were unsafe, unlawful, intolerable or detrimental or that she was subjected to a substantial change in her contract of hire, or that she was separated because of an illness or injury caused or aggravated by her employment. The claimant has not demonstrated that she was told that she had to resign because of any physical reason related to her employment or unrelated to her employment, nor is there any evidence that the claimant has recovered and this recovery is certified by a physician and she has returned to the employer and offer to perform services. The testimony of the claimant is not credible. The claimant testified her early evaluations were excellent but that is disproved by the evaluations entered at Employer's Exhibits 2 and 3. Further, the claimant initially testified that she had expressed concerns to the employer about these matters but then later conceded that she had only expressed concerns to the employer at her exit interview on February 9, 2004, after she had resigned and, further, conceded that she had never indicated or announced an intention to quit to anyone prior to her resignation effective February 6, 2004.

The evidence does indicate that the claimant actually left her employment voluntarily or quit when she was reprimanded, but leaving work voluntarily after being reprimanded is not good cause attributable to the employer. There is some evidence that the claimant was dissatisfied with her work environment and she had a personality conflict with the new supervisor, but these are also not good cause attributable to the employer.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left her employment 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.

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to

accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant has the burden to prove to show that she is able, available, and earnestly and actively seeking work under Iowa Code Section 96.4-3 or is otherwise excused. New Homestead v. Iowa IDJS, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met her burden of proof to demonstrate by a preponderance of the evidence that at all material times hereto, the claimant was able, available, and earnestly and actively seeking work. The claimant so testified to this and there was no contrary evidence from the employer. Accordingly, the administrative law judge concludes that the claimant is able, available, earnestly and actively seeking work at all material times hereto and, as a consequence, she is not ineligible to receive unemployment insurance benefits. However, as noted above, the claimant is disqualified to receive unemployment insurance benefits because she left her employment voluntarily without good cause attributable to the employer.

DECISION:

The representative's decision of March 8, 2004, reference 01, is affirmed. The claimant, Corliss G. Williams, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits.

dj/b