

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

IRENE A KNICKERBOCKER
601 ANDERSON ST
PO BOX 176
JEWELL IA 50130

MVTL LABORATORIES INC
1126 N FRONT ST
PO BOX 249
NEW ULM MN 56073-0249

Appeal Number: 04A-UI-09313-RT
OC: 08-01-04 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

STATEMENT OF THE CASE:

The claimant, Irene A. Knickerbocker, filed a timely appeal from an unemployment insurance decision dated August 24, 2004, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on September 21, 2004 with the claimant participating. Colleen Skillings, Director of Human Resources, and Teresa Sjulín, Laboratory Manager in Nevada, Iowa, participated in the hearing for the employer, MVTL Laboratories, Inc. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Employer's Exhibit 1 was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit 1, the administrative law judge finds: The claimant was employed by the employer as a full-time log-in secretary from November 10, 2000 until she separated from her employment on August 2 or August 3, 2004. On August 2, 2004 in mid or late morning, the claimant called Colleen Skillings, Director of Human Resources and one of the employer's witnesses, and told her that she was resigning when she got another job because she could not take it any more and that she was leaving for the day because she was afraid she would "blow up." Ms. Skillings told the claimant to talk to her supervisor, Teresa Sjulín, Laboratory Manager in Nevada, Iowa, where the claimant was employed and one of the employer's witnesses. The claimant did so and told Ms. Sjulín that she was giving her notice of resignation as soon as she found a job. The claimant then clocked out and left. Ms. Sjulín thought the claimant was going to lunch but the claimant never returned to work that day even though the claimant was supposed to work until 5:00 p.m. The claimant returned to work the next day, August 3, 2004 and was told that the employer had accepted her resignation. The claimant explained to the employer that she had said she would resign when she had a job and did not have one. Nevertheless, the employer accepted the claimant's resignation and paid the claimant for two additional weeks.

The claimant made these statements about resigning because of some conflicts with her supervisor, Ms. Sjulín. On July 30, 2004, the employer had received 30 boxes of plants. Ms. Sjulín helped the claimant log them in and then left. The claimant continued to work but found that not everything that was supposed to be delivered had been delivered. She was unable to complete the task. The next working day, August 2, 2004, the claimant tried to explain this to Ms. Sjulín and Ms. Sjulín reprimanded the claimant and told the claimant that she should not have logged in the items. The claimant then announced her resignation when she got a job and left. The claimant testified that there was continual back stabbing by Ms. Sjulín when she would go to other employees but the claimant gave no specifics. The claimant did express concerns to Ms. Skillings in the fall of 2003 about Ms. Sjulín and that the claimant did not feel that she was being treated fairly by Ms. Sjulín. Ms. Skillings investigated and talked to others and determined that there was no evidence that the claimant was being treated unfairly. The claimant did not at that time indicate or announce an intention to quit if her concerns were not addressed by the employer. The claimant expressed no other concerns to the employer and never indicated or announced an intention to quit if her concerns were not addressed. During a performance review in February 2004, Ms. Sjulín specifically asked the claimant if she had any concerns about her employment and the claimant simply said she could not discuss it.

At the time of the claimant's oral resignation, the employer was facing a busy season. The employer needed to have someone working during that period of time and needed to know if the claimant was going to be working.

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(6)(21)(22)(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:

(6) The claimant left as a result of an inability to work with other employees.

(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.

The first issue to be resolved is the character of the separation. The employer maintains that the claimant voluntarily quit when she resigned orally on August 2, 2004 and it was accepted by the employer. The claimant maintains that she was discharged when she returned to work on August 3, 2004 and was informed by the employer that the employer had accepted her resignation. Although this is a close question, the administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant left her employment voluntarily. The testimony of the witnesses is not too dissimilar. On August 2, 2004, the claimant called the director of human resources, Colleen Skillings, and one of the employer's witnesses, and informed her that she was resigning when she got a job and that she was leaving for the day. The claimant then informed her supervisor, Teresa Sjulín, one of the employer's witnesses and the laboratory manager in Nevada, Iowa, where the claimant was employed, that she was giving her resignation as soon as she got a job. The claimant then clocked out and went home. Ms. Sjulín believed that the claimant was clocking out for lunch but the claimant never returned to work. Although this is a close question, the administrative law judge is constrained to conclude that the claimant here voluntarily quit or resigned. Quitting generally requires an intention to terminate the employment relationship accompanied by an overt act carrying out that intent. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 613 (Iowa 1980). Here, the claimant demonstrated an intention to terminate the employment relationship by informing the employer that she intended to resign and that this was accompanied by an overt act carrying out the intent by leaving and not returning that day. It is true that the claimant indicated when she was resigning that it would be when she got a job and placed no specific date on it. Nevertheless, the administrative law judge concludes that the claimant was quite clear that she was resigning. When an employee gives a definite notice of leaving employment at a future date, the employee has quit. Local Lodge #1426. Here the claimant gave a definite notice of leaving at a future date but did not specify the future date. However, the claimant accompanied the statement by leaving work and not returning that day. The statement and the leaving work combined to demonstrate both an intention to terminate the employment relationship and

established an overt act to carry out that intention. To rule otherwise would place the employer in an untenable situation. Knowing that the claimant was going to resign, the employer would have to wait until the claimant actually gave a date. The claimant could simply come in one day and state that she was resigning and not coming back or could simply refuse to show up for work. The employer here was facing the busy season and needed to have someone working and needed to know if the claimant was going to be working. The employer could not rely upon the claimant's continuing to work. Peck vs. Employment Appeal Board, 492 N.W.2d 438 (Iowa App. 1992) held otherwise in a case in which the claimant left work but did not say he was resigning but simply to mark him down as sick or on a leave of absence and he would take up his concerns later. The Iowa Court of Appeals ruled in that case the claimant did not demonstrate an intent to quit his employment. The administrative law judge believes that the facts here are different in as much as the claimant indicated an intention to resign and also left work without permission. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily on August 2, 2004. 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 claimant testified that she made the statement that she did and left work because she was frustrated over an incident the prior working day, Friday, July 30, 2004, when her supervisor, Ms. Sjulín left early and the claimant continued to log in deliveries but the deliveries were not complete. When Ms. Sjulín came in on the next working day, August 2, 2004, the claimant explained this to Ms. Sjulín and Ms. Sjulín reprimanded the claimant saying that she should not have logged in the items. The administrative law judge does not believe that this incident establishes that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that she was subjected to a substantial change in her contract of hire. Rather, it appears that the claimant was reprimanded and this is not good cause attributable to the employer for a voluntary quit. The claimant then testified that Ms. Sjulín continually backstabbed her by going to other employees but the claimant did not give any specific examples. The claimant even conceded that at least on August 2, 2004, she had a personality conflict with her supervisor but again this is not good cause attributable to the employer for a voluntary quit nor is an inability to work with other employees. There is also some evidence that the claimant was dissatisfied with her work environment but again this is not good cause attributable to the employer.

More compelling, the claimant only expressed concerns about these matters on one occasion in the fall of 2003 to Ms. Skillings, Director of Human Resources. At that time, Ms. Skillings investigated and found no evidence to support the claimant's allegations. The claimant did not at that time or at any other time indicate or announce an intention to quit if any of her concerns were not addressed. In fact, the claimant deliberately gave up an opportunity to express some concerns to Ms. Sjulín during her review in February 2004. The only time the claimant expressed concerns to the employer was in the fall of 2003 at least eight or nine months before the claimant quit and then did not threaten to quit. The administrative law judge must conclude that the claimant did not give the employer a reasonable opportunity to address her concerns prior to the resignation.

Although the claimant's resignation was accepted immediately by the employer, the employer did pay the claimant an additional two weeks which is the ordinary notice expected of any

employee who is going to quit. So the claimant was paid for the two weeks after her resignation.

In summary, 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.

DECISION:

The representative's decision of August 24, 2004, reference 01, is affirmed. The claimant, Irene A. Knickerbocker, 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.

tjc/tjc