

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA L POCHINSKI
Claimant

APPEAL NO. 10A-UI-14788-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNITY & FAMILY RESOURCES
Employer

OC: 09/19/10
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Community and Family Resources (CFR), filed an appeal from a decision dated October 18, 2010, reference 01. The decision allowed benefits to the claimant, Jessica Pochinski. After due notice was issued a hearing was held by telephone conference call on December 13, 2010. The claimant participated on her own behalf. The employer participated by Executive Director John Hostetler, Clinical Director Michelle Delariva and was represented by Merit Resources in the person of Alicia Perez.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Jessica Pochinski was employed by CFR from October 2008 until September 22, 2010 as a full-time treatment technician. On September 22, 2010, the claimant received an e-mail from her supervisor, Andrea Jondle, in which she stated there had been reports of her using the company internet before her work was done and also, when she was off duty, texting staff who were still on duty. The supervisor also stated it had been reported by some of the clients the claimant had been “flirting” with another client. Ms. Jondle asked the claimant to come and talk to her about these reports or respond by e-mail. Ms. Pochinski called the supervisor and quit. The only reason she cited at that time was “stress” and that she felt “burned out.”

The claimant had reported problems with another co-worker in May and July 2010, to Ms. Jondle. The supervisor set up a mediation the first time and the claimant was satisfied with those results. In July 2010, she was encouraged to approach the other staff member herself and work things out, which she did.

Ms. Pochinski also alleged Ms. Jondle and others had made sexual comments about her and a male co-worker, such as “why don’t you just go ahead and fuck him, you know you want to.” Although the claimant was offended, she did not report these comments to Ms. Jondle’s supervisor or anyone else.

She also felt the work environment was full of “gossip and backstabbing” and that the supervisor was showing bias and favoritism. Ms. Pochinski reported these concerns to Clinical Director Michelle Delariva in September 2009, and was encouraged to first of all talk to Ms. Jondle directly and, if that did not resolve the situation, to report back to the director. The claimant elected not to discuss the matter with Ms. Jondle and never pursued the complaint with the director.

Jessica Pochinski has received unemployment benefits since filing a claim with an effective date of September 19, 2010.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.25(21), (22), (6) 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:

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

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

The claimant quit because of conflict with the supervisor and co-workers. The few times she did go to a supervisor or the director about these issues, something was done. Mediation was set up regarding the conflict with the co-worker and the director encouraged her to deal directly with the supervisor first and to come back if that did not work. But the claimant did not pursue any of these remedies, electing to remain silent and not have the upper management address her concerns.

In order for good cause attributable to the employer to exist, a claimant with grievances must make some effort to give the employer an opportunity to work out whatever problem led to the grievance. By not giving notice to the employer of the circumstances causing the decision to quit employment, the claimant failed to give the employer an opportunity to make adjustments which would alleviate the need to quit. *Denby v. Board of Review*, 567 P.2d 626 (Utah 1977).

Ms. Pochinski's decision to resign was precipitated by the e-mail from Ms. Jondle which notified her of certain complaints and concerns and asking her to respond and discuss them. She was not being accused of any wrongdoing by the employer, merely being notified of the complaints

in what appears to have been an initial investigation. There is a difference between being accused by the supervisor of wrongdoing and merely being notified of a complaint and being given an opportunity to tell her side of the story. Nonetheless the claimant elected to resign rather than address the supervisor's concerns.

The record establishes the claimant quit because she was no longer happy about working at CFR, was not getting along with her supervisor or co-workers, and was "stressed out" from the work. Under the provisions of the above Administrative Code section, these do not constitute good cause attributable to the employer and the claimant is disqualified.

Iowa Code § 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.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of October 18, 2010, reference 01, is reversed. Jessica Pochinski is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs