IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

AMANDA D ALLEN
Claimant

REGIS CORP
Employer

APPEAL NO. 11A-UI-15301-L

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/23/11
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 21, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held on January 17, 2012 in Des Moines, Iowa. Claimant participated with former stylist Jennifer Vymetal. Employer participated through area supervisor, Rhonda Gensler and was represented by Steven Zaks of Barnett Associates Inc., who participated by telephone.

ISSUE:

The issue is whether claimant voluntarily left the employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time stylist at Southridge Mall from December 2010 through June 23, 2011 when she quit. She was under high stress and Gensler had threatened to fire her. There was no manager on site and had not been since the former manager was fired in late May 2011. She did not see a medical professional about her stress. Three stylists were working 90 or more hours every two weeks and two of them had to be there at all times. Store hours were 10:00 a.m. to 9:00 p.m. six days per week and noon to 5:30 p.m. on Sundays. She did not ask how long the schedule would last but Gensler told her no one would be hired right away and the manager would not be replaced but they may get help from other stores. Vymetal quit a day or two before claimant and left Allen and one other stylist, Tracy Reidel to cover the hours. They were expected to make sales and appointment goals that were not feasible for the traffic level in that mall. There was no manager there to order color for customers and they had to try to cobble together colors for customers that would work. Gensler was in the store once or twice per week, but was not there long enough to place orders or take customers for appointments and was on the phone most of the time. Gensler was not at the store for at least one week prior to the separation and did not answer text messages from three stylists while she was on a company trip from June 20 through 23, 2011 and texted claimant after she called company vice presidents. Claimant and Reidel quit the same day. Claimant has worked fewer than 15 hours per week in self-employment since the separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with good cause attributable to the employer.

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 24.26(4) 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:
>
> (4) The claimant left due to intolerable or detrimental working conditions.

A notice of an intent to quit had been required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871 IAC 24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871 IAC 24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871 IAC 24.26(6)(b) but not 871 IAC 24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.,* 710 N.W.2d 1 (Iowa 2005).

Although claimant did not have the advice of a medical care provider to quit the employment, a reasonable lay person or employer would know that covering that store schedule between two or three people while trying to meet sales and appointment goals without proper materials and supplies, is very likely to create an intolerable strain on even an otherwise healthy worker's physical and mental health and created a detrimental work environment. Thus, the claimant has established good cause reasons for leaving the employment. Benefits are allowed.

DECISION:

The November 21, 2011 (reference 01) decision is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible. The benefits withheld shall be paid to claimant.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/css