

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RACHEL HOCKENBERRY
Claimant

APPEAL NO: 10A-UI-06616-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND COMMUNICATIONS GROUP
Employer

OC: 04-04-10
Claimant: Respondent (4-R)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 30, 2010, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on June 22, 2010. The claimant participated in the hearing. Amanda Holmes, Human Resources, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left her 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: The claimant was employed as a full-time account manager for Acreage Magazine for Heartland Communications from December 15, 2008 to October 22, 2010. She submitted a two-week resignation notice in August but Supervisor Justin Champine asked the claimant to stay and work outside the office until November 2, 2010, when she was expected to return to the office. She had submitted her resignation notice because she had another business opportunity but that fell through because of the economy and the claimant never performed any work for that employer. The claimant was very uncomfortable around Mr. Champine. She felt he effectively sexually harassed her by looking at her chest when she was in the office and went to the file cabinets by his office and had to bend down to get into some of the file cabinets. As November 2, 2010, the time she was to return to the office, approached the claimant became more uncomfortable about returning to the office to work with Mr. Champine. When she spoke to him by phone or e-mail he made inappropriate comments, most of which she could not recall, except that he repeatedly called her and asked if she "missed (him)" in a way that made her feel he was treating her more like he was interested in her as a woman rather than an employee. He also made it clear to her he controlled how long she stayed on an hourly wage and commission instead of being on straight commission when she worked outside of the office. On October 22, 2010, the claimant submitted a two-week notice in writing to Mr. Champine because she decided she could not return to the office and work with him every day (Employer's Exhibit

One). The following day Mr. Champine cut off her access to the employer's programs and she was unable to work during the remainder of her two-week notice period. Her resignation notice stated, "I hereby officially resign from my position of Account Manager with Heartland Communications and will not be returning on November 2nd" and indicated she had been presented with an opportunity she needed to pursue (Employer's Exhibit One). Because the claimant used the dates rather than stating directly it was a two-week notice the employer decided her resignation was effective immediately. The claimant never went to the employer and reported Mr. Champine's behavior toward her and the employer was unaware of the situation. The claimant testified she did not go to the employer because she did not want to make trouble for the employer and because five months after she started Mr. Champine was investigated for his treatment of employees, not sexual harassment, and unbeknownst to the claimant, he was disciplined by Human Resources and they believed the problem was resolved but the claimant was not aware he was disciplined and thought he got away with his bad behavior because she did not know disciplinary action of an employee is confidential information.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer but is eligible for benefits during her notice period.

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. While the claimant may have been sexually harassed by Mr. Champine she could not offer specific testimony about what happened beyond the way he looked at her by the filing cabinets and the way he asked if she "missed (him)" when she was working outside the office. Additionally, she never reported the incident to the employer and as a result it was not aware of the situation and therefore could not conduct an investigation of Mr. Champine's behavior. Consequently, she has not demonstrated that she was sexually harassed by Mr. Champine. With regard to her two-week notice, however, the employer argues it was not a two-week notice because the words "two week notice" do not appear in the resignation letter. In reading the letter, it appears it is more a question of semantics about whether she was giving a two-week notice. While the claimant stated, "I hereby officially resign from my position of Account Manager with Heartland Communications and will not be returning on November 2," the letter was dated October 22, 2009, which was 12 days before her resignation date. A tortured reading would allow the employer to determine she was not giving a two-week notice, and the claimant did not word the letter in a way that made it perfectly clear she was working during her two-week notice period. A common sense reading of the letter, however, would lead to the conclusion she was giving a two-week notice. Therefore, the claimant has not met her burden of proving her leaving was caused by the employer and is not

eligible for benefits except for the one-week period ending October 31, 2009, when she was not allowed to work after giving her notice, and is disqualified for benefits after that week.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The April 30, 2010, reference 01, decision is modified in favor of the appellant. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are allowed for the one week ending October 31, 2009, because she gave notice to the employer, but withheld after that date until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs