IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

HEATHER M MAPES
Claimant

MIDAMERICAN ENERGY COMPANY
Employer

APPEAL NO. 08A-UI-05228-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/04/08 R: 02
Claimant: Respondent (2)

Iowa Code Section 96.5(1)(d) – Voluntary Quit Based on Medical Condition
Iowa Code Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

MidAmerican Energy Company filed a timely appeal from the May 29, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was commenced on June 16, 2008 and concluded on June 18, 2008. Claimant Heather Mapes participated. Employee and Labor Relations Representative Brad DeBoer represented the employer. At the request of the employer, the administrative law judge took official notice of the documents that were submitted for or generated in connection with the May 27, 2008, fact-finding interview. Both parties were provided with a copy of the fact-finding materials prior to the appeal hearing. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit A into evidence.

ISSUES:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Heather Mapes was employed by MidAmerican Energy Company as a full-time Office Service Tech II from July 19, 2004 until May 6, 2008, when she voluntarily quit. Ms. Mapes' immediate supervisor was Tabitha Glass, Supervisor of Office Support and Document Production. Ms. Glass is still employed by MidAmerican Energy, but did not participate in the appeal hearing.

On April 2, 2008, Ms. Mapes provided Ms. Glass with a note from her psychiatrist. The note was dated April 2, 2008. The note asked the employer to "please medically excuse from work starting today 4/2/08 through 4/23/08." The note indicated that Ms. Mapes had been under the care of the psychiatrist since December 6, 2007. The employer granted the request for medical leave. Ms. Mapes' anticipated return to work date was April 24, 2008.

At the end of the leave period, Ms. Mapes forwarded to her psychiatrist a medical certification form that was part of Ms. Mapes' application for leave under the Family and Medical Leave Act (FMLA). The FMLA application was intended to retroactively cover her leave during the period of April 2-23.

Before Ms. Mapes' anticipated April 24 return to work date, Ms. Mapes contacted Ms. Glass and asked for two-weeks' vacation. Ms. Mapes told Ms. Glass that her doctor had not or would not provide a medical excuse that would allow Ms. Mapes to take additional medical leave. Ms. Mapes told Ms. Glass that she would be deciding during those two weeks whether to return to her employment. Ms. Glass granted the request for vacation and asked Ms. Mapes to notify her of her decision regarding her employment. On May 2, Ms. Mapes telephoned Ms. Glass and told Ms. Glass that she would not be returning to the employment. Ms. Glass asked Ms. Mapes to submit something in writing. On May 6, Ms. Mapes sent Ms. Glass an e-mail message that contained her immediate resignation from the employment. On May 6, Ms. Glass mailed Ms. Mapes a letter accepting the resignation.

Ms. Mapes had ongoing interpersonal conflict with her coworkers. In June 2007, a coworker alleged that Ms. Mapes had broken into a supervisor's drawer to obtain information regarding work assignments. The employer conducted an investigation and concluded it could not substantiate the allegation. The employer recognized, in connection with its investigation, the need to improve communication and address the interpersonal conflict amongst the Office Service Techs. The employer arranged for a one-time group class in which all of the Office Service Techs participated. Thereafter, the employer made additional classes/counseling available to the Office Service Techs on an individual, voluntary basis. Ms. Mapes elected not to participate beyond the first group session. Ms. Mapes believed that if she continued to participate in the counseling it would appear that she was the source of the conflict or communication issues. Most of the interpersonal conflict between Ms. Mapes and her coworkers occurred prior to 2008.

Ms. Mapes had also been offended by a coworker's comment that she was a "lazy American" and had a poor work ethic. The coworker had most recently uttered such comments in mid-March. Ms. Mapes thought the coworker was trying to make her feel guilty for taking time off when she was sick or when she needed to care for her children.

At the time Ms. Mapes commenced her leave, the employer has been operating with a short staff because two employees were out on medical leave. This situation contributed to Ms. Mapes' personal stress level and stress within the workplace.

During the employment, Ms. Mapes had not provided medical records to the employer beyond the cursory April 2 doctor's note. The employer uses a third-party administrator for its medical leave program. Neither Ms. Mapes, nor her doctor, provided medical documentation to the third-party leave administrator beyond the FMLA medical certification form submitted in support of the April 2-23 leave. The medical certification form was not available for the appeal hearing.

Prior to quitting, Ms. Mapes did not notify the employer that she intended to quit the employment unless the employer provided reasonable accommodations that would allow her to continue in the employment. Ms. Mapes had told Ms. Glass that she was stressed by the workplace.

Ms. Mapes provided 24 pages of medical records for the appeal hearing. Those records document a significant history of non-work-related mental health issues and poly-substance abuse issues. The bulk of these issues pre-date Ms. Mapes' employment at MidAmerican Energy Company. The medical documents indicate that Ms. Mapes spoke with her psychiatrist

on multiple occasions about her desire to quit her employment. The medical documents do not indicate that Ms. Mapes' psychiatrist, or any other medical or mental health professional, advised Ms. Mapes to quit her employment at MidAmerican Energy Company.

Ms. Mapes established a claim for unemployment insurance benefits that was effective May 4, 2008 and has received benefits totaling $1,865.00.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:
>
> d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Workforce Development rule 817 IAC 24.26(6)(b) addresses voluntary quits due to work-related illness or injury. The rule states that a person will be eligible for unemployment insurance benefits if all of the following conditions apply:

> 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 the 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.

Workforce Development rule 817 IAC 24.26(6)(a) addresses voluntary quits due to non-work-related illness or injury. The rule states that a person will be eligible for unemployment insurance benefits if all of the following conditions apply:

> 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 greater weight of the evidence indicates that Ms. Mapes' quit was not in fact based on a medical condition, illness or injury. Ms. Mapes demonstrated the ability to perform her assigned duties, despite her mental health issues, by successfully performing those duties over the course of an employment that exceeded three and a half years. The medical records submitted by Ms. Mapes indicate a primary diagnosis of dysthymia, in other words, mild ongoing depression. The evidence does not indicate that Ms. Mapes' mild depression interfered with her ability to perform her duties or made it necessary for her to quit the employment. The medical records submitted by Ms. Mapes reference Ms. Mapes' comments to her psychiatrist that she felt work-related stress. However, the records do not indicate a diagnosis of clinical anxiety. The evidence does not indicate that Ms. Mapes' stress interfered with her ability to perform her duties or made it necessary for her to quit the employment. The medical records indicate that Ms. Mapes had more significant stressors outside work that were specific to her marital and/or family situation. Even these stressors did not make it necessary for Ms. Mapes to quit the employment. The fact that neither of Ms. Mapes' medical/mental health providers would provide her something in writing to indicate that the quit was medically based further supports the conclusion that Ms. Mapes' voluntary quit was not based on a medical condition, injury or illness. The fact that Ms. Mapes' psychiatrist specifically declined to write an excuse to extend the medical leave beyond April 23 also confirms that the quit was not medically based.

Based on the greater weight of the evidence, the administrative law judge further concludes that Ms. Mapes' mental health condition was not caused or aggravated by the employment, that the quit was not based upon the advice of a doctor or therapist, and that Ms. Mapes had not presented medical documentation to the employer to justify a quit. The evidence further indicates that Ms. Mapes did not tell the employer she intended to quit unless she received some sort of accommodation. Because Ms. Mapes' mental health issues did not prevent her from performing her work, there was nothing for Ms. Mapes to recover from. The fact that Ms. Mapes felt less stressed when she no longer had to go to work was to be expected, but proves little.

The administrative law judge notes that the Workforce Development representative's May 29, 2008, reference 01 decision allowing benefits avoided the medically-based quit issue and concluded there was a quit based on intolerable and/or detrimental working conditions.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). However, prior notification of the employer before a resignation for a medical reason is required. The evidence must show that before resigning the claimant 1) put the employer on notice of the condition, 2) warned the employer that she or he may quit if the situation is not addressed and 3) gave the employer a reasonable opportunity to address legitimate grievances. See Suluki v. EAB, 503 N.W.2d 402 (Iowa 1993).

For the reasons cited above, the administrative law judge concludes there were not in fact intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment. See 871 IAC 24.26(4).

The greater weight of the evidence in the records establishes that Ms. Mapes voluntarily quit the employment due to an inability to get along with coworkers and dissatisfaction with the work environment. A quit due to either circumstance is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(6) and (21).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Mapes voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Mapes is disqualified for benefits until 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 employer's account shall not be charged for benefits paid to Ms. Mapes.

Iowa Code section 96.3-7 provides:

> 7. Recovery of overpayment of benefits. 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.
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> 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.

Because Ms. Mapes has received benefits for which she had been deemed ineligible, those benefits constitute an overpayment that Ms. Mapes must repay. Ms. Mapes is overpaid $1,865.00.

DECISION:

The Agency representative's May 29, 2008, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until 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 employer's account shall not be charged. The claimant is overpaid $1,865.00.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs