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

TABATHA J CULBERTSON
Claimant

APPEAL NO. 07A-UI-05319-S2T

ADMINISTRATIVE LAW JUDGE DECISION

FBG SERVICE CORPORATION
Employer

OC: 04/29/07   R: 01
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Tabatha Culbertson (claimant) appealed a representative's May 16, 2007 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she had voluntarily quit employment with FBG Service Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 7, 2007. The claimant participated personally. The employer was represented by Diana Perry-Lehr, Hearings Representative, and participated by Dave Rutherford, Area Manager, and Toni Sparr, Supervisor

ISSUE:

The issue is whether claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 4, 2006, as a full-time cleaning specialist. The claimant signed for receipt of the company handbook on April 4, 2006. The handbook indicated that the claimant could receive vacation pay if she averaged 32 hours per week. The claimant's supervisor regularly submitted the claimant's hours to the owner and the owner paid the claimant for fewer hours. The supervisor and claimant tried to get the situation worked out but the claimant was not paid for the hours she worked and this affected whether she was eligible to receive vacation pay. In addition the employer promised the claimant a raise effective April 4, 2007. The employer later felt the claimant did not deserve a raise because she had surgery and was absent from work.

On April 30, 2007, the claimant argued with the employer about not being paid for hours she worked, not receiving her raise or vacation pay. The claimant gave the employer notice that she was resigning effective May 14, 2007. The claimant never returned to work. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work with good cause attributable to the employer.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her words and actions. She told the employer that she was leaving and quit work.

In the absence of agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving the employment. Deshler Broom Factory v. Kinney, 140 Nebraska 889, 2 N.W.2d 332 (1942). When an employee quits work because the employer did not pay wages when they were due without an agreement to the contrary, her leaving is with good cause attributable to the employer. The claimant left work because she was not paid her wages when they were due and there was no agreement to the contrary. Her leaving was with good cause attributable to the employer. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's May 16, 2007 decision (reference 01) is reversed. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs