IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DOREEN K SCHOONOVER
1700 W 16TH ST
SIOUX CITY IA 51103

SIOUX CITY COMMUNITY SCHOOL DIST
ATTN STEVE CRARY
1221 PIERCE
SIOUX CITY IA 51105

DENNIS MCELWAIN
ATTORNEY AT LAW
PO BOX 1194
SIOUX CITY IA 51102-1194

Appeal Number: 05O-UI-08644-JTT
OC: 06/10/05 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Doreen Schoonover filed a timely appeal from the June 10, 2005, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on September 7, 2005. Ms. Schoonover personally participated and was represented by Attorney Dennis McElwain. Human Resources Specialist Susan Fenceroy represented the employer. Exhibits One, Two, and A through G were received into evidence. The administrative law judge took official notice of the Agency administrative file.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Doreen Schoonover was employed as a full-time building service technician (janitor) from

October 13, 1986 until November 2, 2004, when she submitted her written resignation and voluntarily quit the employment.

Ms. Schoonover suffered a number of workplace injuries during her last few years of employment with the Sioux City school district. In January 2002, Ms. Schoonover suffered injury to her back while lifting furniture. In October 2002, Ms. Schoonover fractured her left arm when she fell under some bleachers. In October 2003, Ms. Schoonover suffered injury to her back, hips and groin while cleaning the floor around a toilet. In July 2004, Ms. Schoonover suffered injury to her left hamstring and knee when her legs slipped out from under her as she used a machine to scrub a web floor. After each injury, Ms. Schoonover returned to work. Each injury gave rise to a worker's compensation claim. After the July 2004 injury, Ms. Schoonover returned to work on light duty status. Ms. Schoonover continued on light duty status for the duration of her employment.

At the beginning of the 2004-2005 school year, Director of Human Resources Steven Crary brought to Ms. Schoonover's attention her history of absences beginning with the 2002-2003 school year. Ms. Schoonover was absent 14.5 days for "emergency, family hospitalization, sick leave and dependent leave." These absences did not include absences related to workplace injuries. During the 2003-2004 school year, Ms. Schoonover had been absent 41.5 days, of which 28 days were related to workplace injury and the other 13.5 days were attributable to the other types of leave listed above. Mr. Crary advised Ms. Schoonover that her history of absences was "not acceptable and must be corrected" and threatened further disciplinary action.

On October 14, 2004, Ms. Schoonover caught her toe on a box in a storeroom and suffered a sprained right ankle. Ms. Schoonover reported the injury to the employer and received medical treatment, returned to work and continued on light duty status. On October 20 or 21, Director of Human Resources Steven Crary approached Ms. Schoonover to discuss Ms. Schoonover's employment with the school district. Mr. Crary said to Ms. Schoonover, "What am I going to do with you?" Mr. Crary advised Ms. Schoonover that the school district could not continue to pay for worker's compensation insurance for Ms. Schoonover because of the history of injuries and/or claims. Ms. Schoonover indicated that she needed to work at least another six months. Ms. Schoonover was 59 years old and had planned to work as long as she could, with the understanding that she would be better off financially if she worked until she was 62 years old. Mr. Crary advised Ms. Schoonover that he would "see what he could do."

Later that day, Mr. Crary approached Ms. Schoonover with a proposal that had been approved by the superintendent for the school district. Ms. Schoonover would agree to resign and not seek re-employment with the school district. The school district would pay Ms. Schoonover her accrued vacation benefits and would also pay Ms. Schoonover 20 weeks' salary as severance pay. Mr. Crary presented a written agreement for Ms. Schoonover to discuss with her husband and/or an attorney. Mr. Crary instructed Ms. Schoonover not to discuss the matter with anyone else and that if Ms. Schoonover accepted the offer, she should advise people that she was retiring. On October 28, after conferring with her attorney, Ms. Schoonover accepted the school district's proposal. On November 2, 2004, Ms. Schoonover submitted her written resignation, in which she indicated she was retiring, effective December 31. Ms. Schoonover continued to receive her regular pay through April, pursuant to the severance agreement.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Schoonover's voluntary quit was for 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.

871 IAC 24.25(24) 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 section 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 section 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:
>
> (24) The claimant left employment to accept retirement when such claimant could have continued working.

Ms. Schoonover argues that she was compelled to quit the employment or face discharge.

871 IAC 24.26(21) 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:
>
> (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The applicable test for a quit in lieu of discharge situation is whether a reasonable person in Ms. Schoonover's position would have concluded that his or her choice was to quit or face discharge. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

The weight of the evidence in the record fails to establish that Ms. Schoonover quit the employment in lieu of discharge, or that a reasonable person would have concluded under the circumstances that his or her choice was to accept the school district's proposal for early retirement or face discharge. The school district had continued to employ Ms. Schoonover throughout the history of her injuries and related worker's compensation claims. The school district had accommodated Ms. Schoonover's need for light duty work for months after the July 2004 injury. When Mr. Crary approached Ms. Schoonover with the proposal for early retirement, Ms. Schoonover had just injured herself while on light duty status. A reasonable

person would question whether it was prudent for Ms. Schoonover to continue in her duties. The school district extended an offer of early retirement to Ms. Schoonover, provided her with ample opportunity to consider the offer, and encouraged her to discuss the matter with her husband and her attorney. The evidence in the record does not indicate the Mr. Crary coerced Ms. Schoonover or indicated that Ms. Schoonover would not be allowed to continue in her duties if she declined the offer. Ms. Schoonover made the reasoned decision to accept the early retirement proposal. Ms. Schoonover voluntarily quit the employment to accept retirement when she could have continued working.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Schoonover's voluntary quit was without good cause attributable to the employer. Accordingly, Ms. Schoonover 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 will not be assessed for benefits paid to Ms. Schoonover.

DECISION:

The Agency representative's June 10, 2005, reference 02, decision is affirmed. The claimant's voluntary quit was 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 will not be assessed for benefits paid to the claimant.

jt/kjw