

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY BUTZ
Claimant

APPEAL NO: 10A-UI-15656-B

**ADMINISTRATIVE LAW JUDGE
DECISION**

WRIGHT COUNTY HEALTH DEPARTMENT
Employer

OC: 10/03/10
Claimant: Respondent (4/R)

Iowa Code § 96.5-1 - Voluntary Quit
871 IAC 24.27 - Voluntary Quit of Part-Time Employment

STATEMENT OF THE CASE:

Wright County Health Department (employer) appealed an unemployment insurance decision dated November 5, 2010, reference 03, which held that Ashley Butz (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Fort Dodge, Iowa on March 21, 2011. The claimant participated in the hearing with Kathy Fender and Attorney Karmen Anderson. The employer participated through Alexis Morgan, Hopes Program Administrator; Linda Klehm, Administrator; Kathy Nicholls, Assistant Administrator; Juanita Thompson, Public Health Nurse; and Attorney Stuart Cochrane. Employer's Exhibit One through 17 were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from her part-time employment qualifies her to receive unemployment insurance benefits.

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 employed as a part-time family support worker in the Wright County Hopes Program from December 7, 2009 through October 5, 2010 when she submitted her verbal resignation. She is a licensed practical nurse but her license was not required for this position. The Hopes Program provides services for high risk pregnant women and children up to age three. The claimant voluntarily quit her employment due to what she believed to be a hostile work environment.

The claimant was involved in a motor vehicle accident in March 2009 in which one of her children died. She sustained a concussion and a brain injury in the accident. The claimant continues to struggle with this tragedy and has been diagnosed with depression; she is taking anti-depressant medication and going to therapy as a result. She volunteers much of this information to those around her but she also testified that "everyone" knew it because they live

in such a small town. The claimant has also had domestic problems with her husband and she has reported that information with the employer because of a restraining order and the potential for conflict. She also volunteered that she was struggling financially and the employer sought ways that it could provide some assistance to the claimant. The claimant has been trying to complete her registered nurse degree which also creates some significant stress for her.

The claimant missed a week of work in July 2010 and she feels like the harassment started after that time. She said the employer, particularly Kathy Nichols but also Alexis Morgan, was demanding answers to personal questions and as to what medications she was taking. Ms. Nichols is in charge of the program and was ultimately responsible for the employees within it. The claimant said that she was "evaluated" in the office on a weekly basis when the employer would question and harass her as to what was going on in her life. In her resignation letter that she provided to the employer on October 7, 2010 she states, "Every day I am called into this individual's office where a barrage of questions and statements are fired at me, demanding answers to questions regarding my personal life, demanding to know what medications I am taking, asking what diseases I have, questions regarding my family situation and on and on. The unnecessary time spent being questioned/harassed and subjected to a hostile work environment interferes and takes valuable time away from my duties in providing efficient and effective patient care, preventing me from completing my normal job duties, including my work for the County and the WIC Clinic."

From March 2010 through October 2010, the claimant missed almost as much time at the WIC Clinic as she worked. When she called in her absence at the last minute, the employer had to scramble to get another employee from a different county to report to the WIC Clinic so that it could open on time. The claimant missed some training, some appointments, and some assignments.

The employer was concerned about the claimant's health and well being but more importantly, it needed to make sure that she was capable of performing her job duties, since she was working with high risk pregnant women and children. The employer did not want the stress of the job affecting either the claimant or the clients in a detrimental manner. The claimant never mentioned any complaints prior to her separation and the employer was quite surprised after hearing the claimant's complaints.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

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.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She voluntarily quit her employment on October 5, 2010 due to a hostile work environment. 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). The test is whether a reasonable person would have quit under the circumstances. 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). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

The evidence provided by the claimant does not rise to an intolerable or detrimental work environment. "Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (Florida App. 1973). The claimant sustained a tragic personal loss, she possibly suffers from some significant medical issues and she is under a great deal of stress as the result of her personal situation. While she believes the employer was "harassing" her, the evidence demonstrates the employer was acting with due diligence to protect her and its own clients. If the claimant felt the employer's questions were inappropriate or unacceptable, she had the option of not answering. If she did not feel she had that option, then it is related to her personal issues as opposed to those of her job. The administrative law judge sympathizes with the claimant's struggle but cannot hold the employer responsible for the separation. The separation is disqualifying and the employer's account is not subject to charge.

However, an individual who quits part-time employment without good cause, yet is otherwise monetarily eligible based on wages paid by other base-period employers, shall not be disqualified for voluntarily quitting the part-time employment. Benefit payments shall not be based on wages paid by the part-time employer and charges shall not be assessed against the part-time employer's account. Once the individual has met the requalification requirements, the wages paid from the part-time employment can be used for benefit payment purposes. 871 IAC 24.27.

Based on this regulation, this matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits when the wage credits the claimant earned while working for the employer are not used in determining the claimant's monetary eligibility or her maximum weekly benefit amount.

DECISION:

The unemployment insurance decision dated November 5, 2010, reference 03, is modified in favor of the appellant. The claimant voluntarily quit her part-time employment for disqualifying reasons. Therefore, the employer's account will not be charged. This matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits and to determine what her maximum weekly benefit amount is when the wage credits the claimant earned from the employer are not taken into consideration to determine these two issues.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css