IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KATHLEEN A PETERSEN
Claimant

PER MAR SECURITY & RESEARCH CORP
Employer

APPEAL NO. 12A-UI-07117-HT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/13/12
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Per Mar, filed an appeal from a decision dated June 5, 2012, reference 02. The decision allowed benefits to the claimant, Kathleen Petersen. After due notice was issued, a hearing was held by telephone conference call on July 10, 2012. The claimant participated on her own behalf. The employer participated by Human Resources Generalist Heather Rusch and Operations Manager Kevin Sullivan. Exhibits One, A, and B were admitted into the record.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Kathleen Petersen was employed by Per Mar from November 15, 2010 until May 10, 2012 as a full-time material handler.

On April 16, 2012, the claimant wrote an e-mail to Human Resources Generalist Heather Rusch regarding complaints of bad language, "body humor," and "unprofessionalism" in the Cedar Rapids, Iowa, facility. Ms. Rusch immediately wrote General Manager Tom Koska he needed to address these issues immediately and "make sure it ends."

An e-mail was sent to all personnel at the Cedar Rapids, Iowa, facility reminding them it was a place of business and professionalism needed to be maintained. An all-staff meeting was held on April 25, 2012, by Mr. Koska where the concerns were addressed regarding language and the company anti-harassment policy was reviewed. Everyone was required to again sign they had received this policy and understood it. Ms. Petersen attended the meeting and knew it was to address her complaint. She felt more needed to be done but told neither Mr. Koska nor Ms. Rusch her opinion.

On May 7, 2012, she again wrote Ms. Rusch to say things had not gotten any better and referred to a specific incident with a specific co-worker. Operations Manager Kevin Sullivan was notified immediately and he gave a documented verbal warning to the employee about the violation of the anti-harassment policy.

That same day Ms. Rusch asked the claimant if she had specific circumstances, date and times surrounding her complaints. This is standard policy with such complaints. Ms. Petersen did, indeed, have detailed notes she had been taking at least since April 9, 2012, but declined to submit them as requested. She felt nothing had been done apparently because Mr. Sullivan did not inform her that a warning had been given to the co-worker against whom the complaint was lodged. But it is not the employer's policy to announce disciplinary action taken against employees to other employees.

On May 10, 2012, Ms. Petersen received her performance evaluation from Mr. Sullivan. The review was favorable and her raise would be two percent. The claimant became upset because she felt she was entitled to a higher raise because of "all the stuff" that had been going on in the workplace. She announced she was quitting due to the small raise, which was the highest given to anyone in the company's employment, and that she did not like the way the company was operating and the "unprofessionalism."

Mr. Koska tried to contact her later that day to ask her to give details about her dissatisfaction with the way the company was operating but was unable to.

Kathleen Petersen has received unemployment benefits since filing a claim with an effective date of May 13, 2012.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant's resignation was prompted by the fact she did not get as large a raise as she thought she was entitled to. She found the work environment unsuitable but did not notify the employer formally until April 16, 2012. After the notification the employer took immediate steps to address Ms. Petersen's concerns, although she did not feel it was sufficient. But she never notified the employer she thought the meeting and the review of the harassment policy was inadequate.

When another incident occurred she did again contact the human resources person and the complaint was again addressed immediately with a documented warning given to the co-worker. For reasons which are not clear the claimant expected the operations manager to notify her the warning had been given even though she knew it was not the policy of the employer to share information about employee disciplinary action with other employees.

Ms. Petersen could not explain adequately why she did not submit her written notes to Ms. Rusch as requested. This might have made it easier for the employer to understand the whole scope of the problem and the details regarding who should be counseled about specific events. She also could not explain why she did not tell the employer the steps it was taking were not to her satisfaction or suggest what action she thought would adequately address the situation.

The claimant also apparently never told any of the people speaking or acting, in her opinion, "unprofessionally," that their conduct or language was offensive to her and asking them to stop when she was present.

The claimant did follow the proper procedure in reporting her concerns to the employer and the employer did the proper thing and immediately addressed the concerns. Because Ms. Petersen did not indicate she felt the employer's response was inadequate, it had no reason to believe more was needed. The claimant had every reason to know her concerns would be addressed but was apparently content to wait for some unspecified event to occur before bringing another request for action. Further action might have occurred sooner had Ms. Petersen responded to Ms. Rusch's request for written details. The employer cannot be held accountable for not acting on information it did not have.
Overall the administrative law judge concludes the claimant's resignation was based more on the size of the raise rather than other events. This does not constitute good cause attributable to the employer and there is no evidence she was promised a certain amount of raise. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

> 7. Recovery of overpayment of benefits.
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> a. 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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> b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.
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> (2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of June 5, 2012, reference 02, is reversed. Kathleen Petersen is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeyer
Administrative Law Judge

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Decision Dated and Mailed

bgh/css