

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA J MEEKER
Claimant

APPEAL NO. 11A-UI-15015-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHILDREN'S SQUARE USA
Employer

OC: 10/16/11
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge
871 IAC 24.26(12) – Termination Following Notice of Intent to Resign

STATEMENT OF THE CASE:

Children's Square USA filed a timely appeal from an unemployment insurance decision dated November 9, 2011, reference 01, that allowed benefits to Debra J. Meeker. After due notice was issued, a telephone hearing was held December 16, 2011, with Ms. Meeker participating and presenting additional testimony by Elaine Hardy. Director Pam Duffield and Early Childhood Director Becky Snedeker participated for the employer. The administrative law judge takes official notice of Agency benefit payment records and fact-finding records.

ISSUE:

Was the separation a disqualifying event?

FINDINGS OF FACT:

Debra Meeker was employed as a teacher by Children's Square USA from September 8, 2010, until October 20, 2011. On October 17, 2011, Ms. Meeker told Director Pam Duffield that she would be resigning effective November 4, 2011. Several weeks before October 17, Ms. Meeker had been moved from the two-year-old room to a floater position. This meant that Ms. Meeker would work with different children each day. Her title, rate of pay, and hours of work remained the same. Ms. Meeker viewed the change in duties as a demotion.

On October 20, 2011, Ms. Duffield heard from others that Ms. Meeker was complaining. She spoke with Ms. Meeker, reminding her it was necessary for her to keep a positive attitude during the remaining weeks of her employer. Upon hearing from others that Ms. Meeker continued to complain, she dismissed Ms. Meeker. Ms. Meeker responded, "You better hope you never see me on the street."

Ms. Meeker has received unemployment insurance benefits since filing a claim effective November 9, 2011.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 disqualifies an individual for benefits if an individual has left work without good cause attributable to the employer. According to 871 IAC 24.26(1), a substantial change can involve working hours, shifts, compensation, location of employment, or drastic modification in type of work. The evidence in this record does not establish a substantial change. One who resigns because of general dissatisfaction with the work environment or because of conflicts with coworkers or supervisors is disqualified for benefits. See 871 IAC 24.25(21), (6), and (22), respectively.

Iowa Code section 96.5-2-a disqualifies an individual for benefits if an individual is discharged for misconduct in connection with the employment. Discharge because of a threat would constitute misconduct. The testimony of the witnesses on the issue of whether Ms. Meeker threatened Ms. Duffield need not be resolved. Ms. Duffield's written statement for fact-finding establishes that the alleged threat was made after Ms. Duffield had terminated Ms. Meeker's employment on October 20, 2011.

The Iowa Administrative Code provides that if an employee's notice of intent to resign on a future date leads the employer to end the employment immediately, the employee is eligible to receive unemployment insurance benefits up to the point that the resignation would have taken effect. Based on this rule, the administrative law judge concludes that benefits should be allowed through the week ending November 5, 2011. Benefits must be withheld thereafter.

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

7. Recovery of overpayment of benefits.

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.

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.

(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 question of whether Ms. Meeker must repay the benefits she has received for weeks after November 5, 2011, is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated November 9, 2011, reference 01, is reversed. Benefits are withheld effective November 6, 2011, until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The question of repayment of benefits is remanded.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw