

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANNE M KOHLS**  
Claimant

**APPEAL NO. 08A-UI-09228-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 07/20/08 R: 01**  
**Claimant: Appellant (1)**

Section 96.5(1) – Quit  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant, Anne Kohls, filed an appeal from a decision dated September 17, 2008, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on October 27, 2008. The claimant participated on her own behalf. The employer, Care Initiatives, participated by Director of Human Resources Ann Tipping, Administrator Luanne Modlin and was represented by TALX in the person of Jennifer Coe. Exhibit D-1 was admitted into the record.

The claimant had submitted proposed exhibits which she did not fax to the Appeals Section until after the office was closed on Friday, October 24, 2008. It was therefore not received until Monday, October 27, 2008, which was insufficient time to forward the documents to the employer in time for the hearing at 3:00 p.m. on the same date.

**ISSUE:**

The issue is whether the appeal is timely and whether she quit work with good cause attributable to the employer.

**FINDINGS OF FACT:**

A decision was mailed to the claimant's last-known address of record on September 17, 2008. The claimant did not receive the decision as she did not specify an apartment number on her initial claim and the decision was mailed to the street address only. Ms. Kohls contacted her local Workforce Center on October 8, 2008, and was told of the disqualifying decision, and the appeal was filed the next day.

Anne Kohls was employed by Care Initiatives from April 26, 2007 until July 8, 2008 as a full-time activity coordinator. She had filed two complaints in December 2007 with the corporate office. She alleged harassment and, in the second complaint, that the administrator did not do an adequate investigating the first complaint. Human Resources Director Ann Tippins did an investigation and found it was mainly personality conflicts and some tensions created by the former administrator leaving the facility. Ms. Tippins spoke with all the persons involved and

counseled them about getting along, being professional, and showing consideration and respect for others. Ms. Tippins checked in with the claimant in May 2008 and Ms. Kohls complained she felt the employer was “trying to get rid of her.” She was assured Care Initiatives had no such intentions.

Ms. Kohls continued to complain to Ms. Tippens, including a 5:45 a.m. call to her cell phone when she was out of state at a conference. The employer's investigation into new allegations confirmed the earlier findings it was a personality conflict with everyone, including Ms. Kohls, equally at fault for being unable to deal professionally with each other.

Ms. Kohls continued to feel she was being harassed by other employees, but the extent of their action was a refusal to engage her in conversation. Two of the employees about whom she had complained were no longer working in the facility at the time she quit. She felt the employer was trying to “get rid” of her because, among other things, it did not give her a written warning when she missed work due to the major flooding which occurred in the area in June 2008. She had received a prior written warning for missing work due to inclement weather in the winter and felt if the employer had written her up and fired her for missing work in June 2008, which absences were also due to bad weather, it would have had to pay unemployment benefits. Therefore Care Initiatives did not write her up so that she would quit.

On July 2, 2008, Administrator Luanne Modlin did an evaluation of the claimant's performance and evaluated her at 4.5, which is between “needs improvement” and “average.” She was dissatisfied with this and was told she could appeal the evaluation to District Manager Dick Boor. They met on July 7, 2008, and the evaluation results were not changed. Ms. Modlin said she would agree to another evaluation in 90 days and if the claimant showed improvement with the program she was administering, the administrator would recommend to the corporate office that any raise the claimant received would be retroactive to April 26, 2008, her one-year anniversary. The claimant's performance would be reviewed monthly in the meantime.

Ms. Kohls wanted Ms. Modlin to put in writing she would receive a retroactive raise to April 26, 2007, and the employer refused. She could not guarantee the claimant would have earned the raise, the raise could not be made retroactive to her hire date, only the one-year anniversary of her hiring, and she could also only recommended the retroactive raise, the decision would be made by the corporate office. Ms. Kohls said she did not find that acceptable but would discuss it with her spouse that evening. The next day she left a message with the nurse on duty she was quitting.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The claimant did not receive the decision and therefore did not know an appeal needed to be filed. When she was notified of the decision an appeal was filed the following day. The administrative law judge considers the appeal should be accepted as timely.

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(6) and (28) provide:

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:

(6) The claimant left as a result of an inability to work with other employees.

(28) The claimant left after being reprimanded.

The claimant quit because she felt she was being harassed. However, the record does not confirm this. Her complaints were investigated, everyone was counseled about proper workplace conduct, and two of the persons about who she complained were no longer working the facility at the time she quit. Ms. Kohls sincerely believed she was being harassed but has provided no substantial evidence to support that, other than one or two employees declined to engage her in conversation. This is not harassment. The problems between her and her co-workers, which she contributed as much as they, was simply personality problems. This does not constitute good cause attributable to the employer for quitting.

Her contention that she was being forced to quit because the employer did not give her a warning for missing work due to the floods is flawed logic. There is a difference between missing work due to inclement weather in the winter and missing work because of massive flooding which paralyzed entire communities and resulted in entire regions being declared state and national disaster areas. The administrative law judge does not accept the claimant's contention the employer deliberately failed to give her a warning so it did not have to fire her and pay her unemployment benefits.

She felt persecuted but by the time she elected to quit, the actual decision was precipitated by an evaluation with which she did not agree. The employer offered her the opportunity to improve her performance and earn the raise to which she felt she was entitled. It was the employer's refusal to change the evaluation before Ms. Kohls completed the proposed 90-day probation, and to guarantee a raise retroactive to her hire date, that made her decide to quit. The evaluation was a form of reprimand and, as the precipitating event for her resignation, does not constitute good cause attributable to the employer under the provisions of the above Administrative Code section. The claimant is disqualified.

**DECISION:**

The decision of the representative dated September 17, 2008, reference 01, affirmed. Anne Kohls is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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