IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JANELLE M SCHLENGER
Claimant

CARE INITIATIVES
Employer

APPEAL NO: 12A-UI-02393-DT

ADMINISTRATIVE LAW JUDGE
NUNC PRO TUNC DECISION

OC: 01/15/12
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Janelle M. Schlenger (claimant) appealed a representative's February 29, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Care Initiatives (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 27, 2012. The claimant participated in the hearing. David Williams of TALX Employer Services appeared on the employer's behalf and presented testimony from one witness, Deb Schillinger. 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 14, 2010. She worked full-time as a hospice registered nurse case manager in the employer's Sioux City, Iowa office. Her last day of work was January 18, 2012.

The claimant and the team director, Schillinger, had had some prior difficulties, but the claimant had believed those issues were resolved. On January 18 Schillinger received a call from a director of nursing (DON) at a facility at which the claimant was supervising the care of a hospice patient. The DON had expressed concern to Schillinger regarding the claimant's classification of the patient as "actively dying," indicating that the doctor disagreed, and further had questions regarding whether the patient should be given other medication for her dementia diagnosis, the condition for which she was in hospice care, which would normally not be further treated, but for which the doctor would have final say as to whether the patient should be taken off of the hospice list and treated. Schillinger was trying to sort out the situation, leading her to

make an initial call to the claimant around 3:00 p.m., and then another call to the claimant at about 4:47 p.m.

In the later call, the claimant expressed her displeasure with the DON continually second-guessing the claimant's decisions. To Schillinger's recollection, the claimant stated that she was "done with this" and that she was "not doing this any longer." At the least, as per the claimant's recollection, she stated "I'm sick of this s - - -," internally in reference to the second-guessing. Schillinger responded by asking if the claimant was quitting, to the claimant's recollection, "Is that your resignation?" The claimant did not say "no," nor did she say, "let's talk about this tomorrow," but rather she said either "yes" as per Schillinger's recollection, or "I guess if you think so," as per the claimant's recollection. Schillinger responded by indicating she would accept the claimant's resignation, and that the claimant should turn in her bag and equipment to the office the next day. Schillinger provided second-hand information from another employee to whom the claimant spoke shortly after the ending of the phone call on January 18; she indicated that this employee's statement was that the claimant had reported to her that she had quit, although the claimant denied that she had told this employee that she had quit.

The claimant asserted that she had answered Schillinger as she had because she believed Schillinger wanted to get rid of her and that she wanted an affirmative answer to the question as to whether the claimant was resigning. The claimant further asserted that she had spoken with the vice-president of the company on January 19 in an attempt to get her job back, and that the vice-president told her that she needed to get information to him in writing. However, the claimant did not provide anything to the vice-president in writing. She did turn in her bag and equipment on January 19, but not in the office, but at the home of another employee, because she did not wish to see or speak further with Schillinger.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that her separation was not "voluntary" as she had not desired to end the employment; she argues that it was the employer's action or inaction which led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct, because an affirmative answer to the question on the claimant's intention to resign was what Schillinger wanted. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 871 IAC 24.25 provides that, 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 rule further provides that there are some actions by an employee which are construed as being a voluntary quit of the employment, such as where an employee leaves the employment because of a belief she has been or will be discharged, but where the employer has not affirmatively indicated that the employee has been or will be discharged. 871 IAC 24.25.

Here, it is clear that had the claimant said "no" or asked to speak further about the matter later, the discussion would have been tabled and the claimant's employment would have continued. Even accepting the claimant's recollection as to her answer, "I guess if you think so," the employer reasonably understood this to be an affirmative response. The claimant's subsequent actions in the next day, such as contacting the vice-president but not providing him with the written information requested, are more consistent with the actions of a person who has resigned than someone who believes that she has been discharged or forced to resign and who is trying to override that decision to get her job back. The claimant was not asked to resign and was not told she was discharged; therefore, the separation is considered to be a voluntary quit.
The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (22). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). While the claimant's work situation was perhaps not ideal, she has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (FL App. 1973). Rather, her complaints do not surpass the ordinary tribulations of the workplace. The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's February 29, 2012 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of January 18, 2012, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/kjw