

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHY K DUGGAN CONLAN
Claimant

APPEAL NO. 07A-UI-05436-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAPITAL COMMUNICATIONS CO INC
Employer

OC: 05/06/07 R: 02
Claimant: Appellant (1)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, Kathy Duggan Conlan, filed an appeal from a decision dated May 18, 2007, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 12, 2007. The claimant participated on her own behalf. The employer, Capital Communications, participated by General Sales Manager Erin Nanke, Owner Ray Cole and Business Manager Teresa Fuquey.

ISSUE:

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

FINDINGS OF FACT:

Kathy Duggan Conlan was employed by Capital Communications from June 20, 2005 until May 3, 2007, as a full-time account executive. Her sales performance in 2006 was very good but a rapid decline was detected starting in 2007. General Sales Manager Erin Nanke and Owner Ray Cole reviewed her sales figures at the end of each month and when the decline continued, it was decided to issue a formal disciplinary action.

Ms. Nanke met with Ms. Conlan on May 2, 2007, with documentation of the decline of her performance and advised her that improvement needed to be seen. Her sales activity would be evaluated at the end of each month, starting May 2007, and if improvement was not seen then her job would be in jeopardy. Ms. Nanke emphasized the employer hoped to maintain her as an employee and discussed what help was available to her to help her improve.

The claimant became upset and left the meeting and the office, saying she could not continue because she might say something she would regret. Ms. Nanke informed Mr. Cole of the events and he left Ms. Conlan a voice mail on her cell phone about 9:05 a.m. to say he could understand she was upset but thought her indignation was not justified. He asked her to call him at his cell phone before the end of the business day to set up a meeting with him and Ms. Nanke to discuss the situation further. He also stated if he did not hear from her by the end of the day then he would assume she was not interested in continuing her employment.

Ms. Conlan received the message shortly after it was sent but declined to return the call. She stated she was "too upset" to discuss the matter, but did not explain why she did not at least call and tell Mr. Cole she was too upset and would call him the next day when she was calmer. She also did not make an effort to inform him she wished to maintain her employment. On May 3, 2007, she left a message for Mr. Cole on his office voice mail to say she would not be returning except to gather her personal belongings.

Continuing work was available to the claimant and the employer wanted her to remain as she had proved in the past that she could meet her sales goals and quotas. It was left up to her to decide if she wished to continue her employment and she declined.

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.

871 IAC 24.25(28) provides:

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:

- (28) The claimant left after being reprimanded.

The claimant could have continued her employment with Capital Communications as the employer was more than willing to make arrangements to discuss her concerns and "work things out." Her job was not in immediate jeopardy, she was only given a probation period to improve her performance. It was entirely Ms. Conlan's decision to refuse to continue working for the employer because she felt the disciplinary action was unjustified, but the employer does have the right to address performance concerns with employees whose work quality was declining. Under the provisions of the above Administrative Code section, a employee who quits after being reprimanded is considered a voluntary quit without good cause attributable to the employer. The claimant is disqualified.

DECISION:

The representative's decision of May 18, 2007, reference 01, is affirmed. Kathy Duggan Conlan is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css