IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CARA L KIDD
Claimant

WESLEYLIFE
Employer

APPEAL NO: 13A-UI-00954-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/30/12
Claimant: Respondent (2/R)

Iowa Code § 96.5(1) – Voluntary Quit

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's January 18, 2013 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant voluntarily quit her employment for reasons that qualify her to receive benefits. The claimant participated in the hearing. Tracy Taylor represented the employer. Betty Stone, the director of human resources, and Sara Mickle, the hospitality manager, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits?

FINDINGS OF FACT:

The claimant started working for Wesley Retirement Services, Inc. April 2008. This employing entity hired her to work full time. When the claimant's employment ended she worked as the dietary manager. In January 2012, the Wesley Retirement Services, Inc. changed its name to WesleyLife. Wesley Retirement Services was a contributing employer and WesleyLife is a reimbursable employer for unemployment insurance purposes.

The claimant did not have any problems with her employment until a third party, Morrison, became involved and Mickle became the claimant's supervisor in June 2012. On June 13, 2012, Mickle had a mandatory in-service meeting for all staff she supervised. Mickle asked the claimant during the meeting what hours would work best for her to work. During the meeting, Mickle informed employees they were expected to work as scheduled. During this meeting, the claimant also learned Mickle was now her supervisor.

Even though the claimant attended the mandatory June 13 meeting, she did not accept the fact, that Mickle expected her to work the hours she was scheduled to work. Under her previous supervisor, the claimant had hours scheduled for her to work, but she worked the hours her job required her to work. The claimant asserted that she did not understand she was a scheduled manager until early October 2012.

On September 6, 2012, the claimant received a verbal written warning for attendance issues. The claimant told David Tofanelli, a manager, that she had not been told she was a scheduled manager. On September 24, the claimant received her performance evaluation for April 2011 through April 2012. The performance evaluation was prepared by Mickle even though Mickle was not her supervisor during this time. The claimant appealed the documented verbal warning and her performance evaluation because she continued to assert she was not a scheduled manager and the evaluation indicated she needed to improve her attendance.

Before drafting the claimant's evaluation, Mickle reviewed documentation in the claimant's personnel file. The claimant's previous supervisor no longer worked for the employer when Mickle completed the claimant's evaluation. In her performance evaluation, Mickle included incidents that occurred after April 2012. Even though the claimant appealed her evaluation, the employer did not change Mickle's conclusion that the claimant needed to improve her attendance. The employer did not change the documented verbal warning either. In the claimant's performance evaluation a year earlier, she had received an unsatisfactory rating for her attendance. On October 11, Tofanelli told the claimant she was a scheduled manager and was expected to work as scheduled.

On November 5, the claimant received a written warning for on-going attendance issues. The claimant does not deny she was absent, or left work early as the employer's record indicated. Since the claimant had access to other employees' records, she concluded that she was disciplined for attendance issues and others were not. The employer disputed this allegation and named several employees who received warnings for attendance issues.

In early November 2012, the claimant noticed Mickle had prepared a final written warning for the claimant's on-going attendance issues. The employer did not give the claimant this warning until December 27, 2012. The employer did not give the claimant this warning until late December because some absences were not included on the final written warning. When the employer gave the claimant the final written warning, the claimant quit effective immediately. The claimant quit because she believed the employer was not treating her fairly.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5(1). When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code § 96.6(2).

The law presumes a claimant quits without good cause when she leaves after receiving a reprimand. 871 IAC 24.25(28). The law also presumes a claimant quits with good cause when she leaves because of intolerable or detrimental working conditions. 871 IAC 24.26(4).

The facts establish that the claimant appealed her performance evaluation and September verbal warning because she asserted she was not a scheduled manager. The evidence establishes that even though Mickle told the claimant she was scheduled certain hours and had to work as scheduled in a June 13 meeting, the claimant did not accept or acknowledge she was now a scheduled manager.

When the claimant received the November 5 written warning, she did not believe other employees were disciplined for attendance issues. The claimant based this conclusion on the fact she had access to other employees' personnel records and did not notice any warnings

they received for attendance issues when the claimant knew they had attendance issues. The employer testified that other employees were disciplined for attendance issues. The evidence does not establish that the employer gave the claimant warnings for attendance when other employees were not disciplined. As a manager, the employer had the discretion to hold the claimant to a higher standard than employees she supervised.

The claimant asserted she worked in a hostile work environment after Mickle became her supervisor. She did not make this complaint to Stone or the employer's human resource department so this assertion could be investigated.

Based on the evidence, the claimant quit because she received a final written warning for on-going attendance issues. The claimant acknowledged she had been absent, but she still believed Mickle was trying to terminate her employment. The claimant knew that if there were further attendance issues, the employer would discharge her. On the final written warning, the claimant did not agree that she should be counted tardy when she was seven minutes late for work. The employer does not consider an employee late until they report to work late by seven minutes.

When Mickle became the claimant's supervisor, she told the claimant in June that she was a scheduled manager. The claimant did not accept this change until she was told by Toffanelli, another management employee in early October that she was a scheduled manager. The facts establish the claimant never accepted the changes a third party implemented. The claimant did not establish that she quit for intolerable or detrimental working condiitons. Therefore, as of December 30, 2012, she is not qualified to receive benefits.

The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits she may have received since December 30, 2012, will be remanded to the Claims Section to determine.

DECISION:

The representative's January 18, 2013 determination (reference 02) is reversed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of December 30, 2012. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's reimbursable account should not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits she has received since December 30, 2012, is **Remanded** to the Claims Section to determine.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs