

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTIE R SANDERS
Claimant

APPEAL NO: 14A-UI-11728-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PILOT TRAVEL CENTERS LLC
Employer

OC: 10/12/14

Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Pilot Travel Centers, L.L.C. (employer) appealed a representative's November 6, 2014 decision (reference 03) that concluded Kristie R. Sanders (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 4, 2014. A review of the Appeals Section's conference call system indicates that the claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Amy Adams appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

OUTCOME:

Reversed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on or about July 10, 2014. She worked full time as a guest service leader at the employer's Walcott, Iowa travel center, working on an overnight shift from 10:00 p.m. to 6:00 a.m. Her last day of work was her shift that ended on the morning of September 25, 2014.

When the claimant was placed into the guest service leader position, she was informed that her job duties included covering wherever needed in the travel center, including in the sandwich shop area; she had agreed to these responsibilities. On the evening of September 24 another manager had attempted to advise her of issues in the sandwich shop area that the claimant

might need to cover that evening. However, she directly refused, stating that she was not going to watch over that area. This was reported to the general manager, Adams, who came in on the morning of September 25 to discuss the issue with the claimant.

During the discussion the claimant acknowledged that her stated job duties were to cover where needed, including the sandwich shop, but she again stated that she would not provide any coverage in that area. No specific reason was given. When Adams again pointed out that this was part of her job duties, the claimant responded that then she would "get another job." Adams took this as that the claimant was resigning, and in fact the claimant did not report back for any further shifts after that discussion.

The claimant established a claim for unemployment insurance benefits effective October 12, 2014. The claimant has received unemployment insurance benefits after the separation. A fact-finding interview was scheduled for November 5, 2014 at 1:45 p.m. The employer only participated through the presentation of written documents; there was no personal participation. The documents submitted in lieu of participation were not distributed to the parties in this hearing so that the administrative law judge could perform a review to determine whether the written participation did or did not meet the criteria for participation as set out by Agency rule.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant 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. Rule 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. Rule 871 IAC 24.25(21), (22). The claimant 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). The claimant has not satisfied her burden. Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. Participation, which can include by written participation under certain circumstances, is defined in Rule 871 IAC 24.10. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa

Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment is subject to collection under Iowa Code § 96.3-7-b, specifically including the question as to whether the employer “participated” in the fact-finding interview, is remanded to the Benefits Bureau.

DECISION:

The representative's November 6, 2014 decision (reference 03) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of September 25, 2014, 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.

The matter is **REMANDED** to the Benefits Bureau for investigation and determination of the overpayment, participation, and chargeability issues.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs