

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHLEEN R ASCHAN
Claimant

APPEAL NO. 12A-UI-07164-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KUM & GO LC
Employer

OC: 05/20/12
Claimant: Respondent (2R)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Kum & Go LC filed a timely appeal from a representative's decision dated June 8, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on July 11, 2012. The claimant participated. The employer participated by Ms. Donna VerSteeg, Store Manager and Ms. Lucinda Murphy, Sales Manager.

ISSUE:

At issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Kathleen Aschan was employed by Kum & Go LC from May 30, 2011 until April 29, 2012 when she quit her job by refusing to work scheduled hours. Ms. Aschan was hired to work as a part-time sales associate and was paid by the hour. Her immediate supervisor was Donna VerSteeg.

Ms. Aschan left a note for the company's manager on April 6, 2012 indicating that she would no longer be able to work her regular scheduled shift after April 25, 2012. The claimant had experienced problems with childcare and expressed her desire to work only on Sundays and to fill in for absent employees.

In an effort to accommodate Ms. Aschan to go from working from Wednesday through Sunday to substantially fewer working hours, the employer offered Ms. Aschan each or alternating weekends when babysitting would not be a problem for the claimant. The claimant declined the offer because she wished to spend time with her family on one of each two-day weekend days. After the claimant failed to accept the offer of alternative scheduling based upon her previous request the employer concluded that the claimant had relinquished her position with the company by being unwilling to work scheduled hours. Approximately one week after the claimant's last day that she reported for work she was requested to turn in her key.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant left employment with good cause attributable to the employer. She did not.

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(17) 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:

(17) The claimant left because of lack of child care.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

In this matter the administrative law judge concludes based upon the evidence in the record that Ms. Aschan voluntarily quit her employment with Kum & Go by refusing to work reasonable reduced hours that were offered by the employer after the claimant had specifically requested substantial reduction in her working hours for childcare reasons. The claimant had requested a substantial reduction in working hours indicating to her employer that she was going to work only on Sundays and to work as a fill in for other workers who would call in absent. The claimant's reasons for these requests were because she had lost childcare services. Because of the employer's scheduling pattern it was not feasible for the employer to accommodate the claimant's unusual request but the employer offered the claimant a reasonable alternative by offering weekend scheduling. When the claimant declined to work any Saturdays because she wished to have "family time" the employer was unable to accommodate the claimant's very limited availability for work. Based upon the claimant's refusal to accept the reasonable offers that were offered to her by the company the employer reasonably concluded that the claimant had relinquished her position with the company by refusing to work hours offered.

While Ms. Aschan may have had good cause to leave employment from her personal viewpoint the claimant's reasons for leaving were not attributable to the employer. The claimant was unable to work her regular shifts due to lack of childcare and was unwilling to accept a reasonable accommodation and hours offered by the employer. Good cause attributable to the employer for leaving has not been shown. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated June 8, 2012, reference 01, is reversed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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