IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

JESSICA A SAHAGUN Claimant **DOLGENCORP LLC** Employer	**APPEAL 18O-UI-03811-JCT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 10/22/17** **Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer, Dolgencorp LLC., filed an appeal from the November 14, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were notified about a first hearing to be held on December 13, 2017. The claimant, Jessica A. Sahagun, registered to participate. The employer, Dolgencorp LLC., did not respond to the notice of hearing and the hearing was dismissed by Administrative Law Judge James Timberland when the employer/appellant failed to appear. (See Appeal 17A-UI-12034-JT-T.) The employer successfully requested reopening to the Employment Appeal Board (EAB) and a second hearing was scheduled for February 15, 2018, with Administrative Law Judge Blair Bennett. The employer appeared and participated through Paul Vandersee, district manager, and Michelle McCord, store manager. The claimant did not attend and the initial decision was reversed in favor of the employer (See Appeal 18A-UI-01046-B2-T). The claimant then successfully requested reopening to the EAB who remanded the matter for a third hearing to allow both parties to participate.

After proper notice, a third hearing was scheduled for April 18, 2018, but postponed due to a family emergency for the employer witness. A fourth hearing was scheduled and conducted on April 26, 2018 by telephone with Administrative Law Judge Jennifer Beckman. The claimant participated personally. The employer participated through Paul Vandersee, district manager. Michelle McCord, store manager, also testified. Employer Exhibit 1 was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a lead sales associate and was separated from employment on October 19, 2017, when she quit the employment without notice. Continuing work was available.

The claimant and her manager, Michelle McCord, had been close friends outside of employment, and were so close that Ms. McCord had provided her children the claimant's phone number. Prior to separation, the claimant had requested time off to attend a family funeral, and during that time, also began new medication by way of a transdermal Fentanyl patch. The claimant returned to work and began experiencing stomach issues in the evenings which coincided with her work schedule of closing the store. The medicated patch was time sensitive and would release medication periodically, in a way that the claimant could not just adjust the time she took the medication to stave off side effects before her work shift started. The claimant determined if she could adjust her schedule for one week, her body would get used to the medication.

On October 10, 2017, she began text messaging Ms. McCord, who was off duty, requesting a schedule change to work 8:00 to 8:00, which meant she could not perform her key-holder duties of opening or closing the store. Ms. McCord responded to the claimant via text message that she didn't feel well and that it would depend upon other peoples' schedules and availability. The claimant continued pressing, indicating her request was reasonable under the Americans with Disabilities Act. Ms. McCord's fourteen year old daughter sent the claimant a text message from her personal phone, asking her not to contact Ms. McCord, who was trying to sleep. The claimant believed the text message from Ms. McCord's daughter was inappropriate and disrespectful.

She tendered her resignation letter that evening (Employer Exhibit 1). Ms. McCord responded by first leaving the claimant a message at 3:45 a.m. asking if she was serious about quitting and then removing the claimant from the schedule since the scheduled shifts did not meet the claimant's requested work times while she adjusted to the medication. The claimant was then informed she had been suspended and to not return to the store until she was told to. Neither party explained why the claimant was suspended or the purpose of the suspension.

However, the claimant was permitted to return on October 19, 2018. Prior to the claimant's return, she met with human resources and district manager, in which she was informed she was not at fault for anything, and that she rescinded her resignation letter. The claimant did not appear to be still asking for an adjusted shift because she arrived in the afternoon, as was customary for closing shifts. The claimant spoke with Mr. Vandersee upon arrival, who was located in back of the store with Ms. McCord. The undisputed evidence is neither Ms. McCord nor the claimant attempted to greet each other. The claimant stated it was a "busy, busy, busy" day throughout her shift, as she encountered her co-workers, she felt she was being treated differently because the other two employees in the store were not greeting or welcoming her back. A third employee also stopped in the store with a sick child and did not speak to the claimant. The claimant stated she "expected more" from her co-workers if she had not done anything wrong and emphasized repeatedly how her co-workers were close knit like family.

She went outside to smoke and spoke to Mr. Vandersee at which time she stated she was upset by the way she was being treated. The claimant expected Mr. Vandersee to do something immediately. He offered the claimant a transfer to Williamsburg, located 12 miles away but the claimant declined because she felt she should get to stay at the store because she had done

nothing wrong and did not have transportation. She called her mother while outside to help calm down and figure out what to do before handing her keys to Mr. Vandersee, telling him she quit and walking home.

The administrative record reflects that claimant has a weekly benefit amount of $204.00 but has not filed for or received unemployment benefits since filing a claim with an effective date of October 22, 2017. The administrative record also establishes that the employer did not participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal. The notice of initial claim was sent electronically via SIDES to the employer's agent, Talx/Equifax, who responded on behalf of the employer. For unknown reasons, the fact-finding interview and initial decision were mailed to the employer's corporate address located in Tennessee, instead of its agent's address of PO Box 236, St. Louis, Missouri 63166. No one from the corporate office participated in the appeals hearing to confirm receipt. For unknown reasons, the Workforce Advisor conducting the fact-finding interview did not call the phone number listed on the claim protest, which is associated with Talx/Equifax. Instead, the representative called Savanna Sharp and left a voicemail. Mr. Vandersee did not know who Savanna Sharp was or whether she had notice of the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code § 96.5-1 provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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.

Iowa Admin. Code r. 871-24.25(6) and Iowa Admin. Code r. 871-24.25(22) provide:

> **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:
> **(6)** The claimant left as a result of an inability to work with other employees.
> **(22)** The claimant left because of a personality conflict with the supervisor.

The claimant has the burden of proof to establish she quit with good cause attributable to the employer, according to Iowa law. Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv*., 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv*., 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be

exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." Id." Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.,* 494 N.W.2d 660 (1993).

Around October 10, 2017, the claimant requested an accommodation to her work schedule while she adjusted to a new Fentanyl transdermal patch. The request was not supported by a treating physician. The claimant and her manager exchanged text messages while her manager, who was also her friend outside of work, was trying to sleep. The claimant became upset by a text message sent from her manager's daughter, asking her to stop text messaging her manager. After a nine day suspension in employment (which neither party clarified the purpose of the suspension or why it was initiated) the claimant returned to work as a key holder, and the week long request had lapsed. During this period, the claimant had rescinded her resignation notice as well, which was based upon her being upset with Ms. McCord's daughter text messaging her (Employer Exhibit 1). At that point, the issue of the claimant's temporary schedule change to adjust to her medication was moot.

While a claimant does not have to specifically indicate or announce an intention to quit if her concerns are not addressed by the employer, for a reason for a quit to be "attributable to the employer," a claimant faced with working conditions that she considers intolerable, unlawful or unsafe must normally take the reasonable step of notifying the employer about the unacceptable condition in order to give the employer reasonable opportunity to address his concerns. *Hy-Vee Inc. v. Employment Appeal Board*, 710 N.W.2d 1 (Iowa 2005); *Swanson v. Employment Appeal Board*, 554 N.W.2d 294 (Iowa 1996); *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). If the employer subsequently fails to take effective action to address or resolve the problem it then has made the cause for quitting "attributable to the employer."

On October 19, 2017, the claimant returned to work, she felt her co-workers were not friendly to her upon returning after being off work for a period of time. The claimant acknowledged it was a very busy day and the administrative law judge is persuaded that it is possible that the three employees in the store may not have been purposefully "snubbing" the claimant or ignoring her. Further, when the claimant made district manager, Paul Vandersee, aware that she felt uncomfortable, he acknowledged her concerns inasmuch as he gave her time to calm down, and offered her a transfer. If the claimant had issues regarding the work environment, how her peers or management was treating her, she did not give Mr. Vandersee or the employer a reasonable opportunity to investigate after her October 19, 2017 return to work, which would allow her to preserve employment.

The claimant's decision to quit because she did not agree with the supervisor about various issues was not for a good cause reason attributable to the employer. Based on the evidence presented, the administrative law judge concludes the claimant's leaving the employment may have been based upon good personal reasons, but it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

Because the claimant's separation was disqualifying, benefits were originally allowed. However, she did not receive any benefits and therefore there is no overpayment in accordance with Iowa Code § 96.3(7). At this time, the issue is moot.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

DECISION:

The November 14, 2017 (Reference 01) is reversed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issues of overpayment and chargeability are moot at this time.

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Jennifer L. Beckman
Administrative Law Judge

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Decision Dated and Mailed

jlb/scn