IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RITA R CAMPBELL
Claimant

HY-VEE INC
Employer

APPEAL NO. 07A-UI-04618-DT

ADMINISTRATIVE LAW JUDGE AMENDED DECISION

OC: 04/08/07 R: 03
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Rita R. Campbell (claimant) appealed a representative's May 4, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Hy-Vee, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 4, 2007. The claimant participated in the hearing. David Williams of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Rick Fyock and Steve Loomis. During the hearing, Claimant's Exhibit A was entered into evidence. This amended decision is entered to correct the description in the initial decision that this came for hearing on an employer appeal and resulted in a reversal, rather than coming on for hearing as a claimant appeal and resulting in an affirmance; reference to a resulting potential overpayment is also removed. Based on the evidence, the arguments of the parties, 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?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on March 14, 2005. She worked full time as a kitchen clerk in the employer's Creston, Iowa store. Her last day of work was March 27, 2007.

The claimant typically worked 6:00 a.m. to 2:00 p.m., about five days per week. She was the only full-time employee in the kitchen department other than the kitchen manager, as such was the de facto assistant department manager. She had been passed over for the kitchen manager position when that position was filled in September 2006, and had various problems dealing with the kitchen manager who was hired, including the manager's absenteeism, which resulted in additional work for the claimant.

On the evening of March 26 the claimant learned from a former in-law of the kitchen manager that the manager had suffered a type of psychotic breakdown while at home on March 10, which

resulted in Mr. Fyock, the store director, taking the kitchen manager to the hospital. The manager had called the police to report a home invasion and had verbally stated during that occurrence that she had seen the claimant "on her walls." There was no reference to the claimant in any public documents. Mr. Fyock believed the incident was due to a medication issue on the part of the kitchen manager, and the manager subsequently returned to work with no further incident; he considered the incident to fall within employee health information confidentiality.

The claimant was upset that Mr. Fyock had not reported to her the claim made by the kitchen manager. She next worked on March 27, and shortly before 8:00 a.m. sought out the manager in charge, Mr. Loomis, the manager of perishables, and confronted him as to why she was not informed. Mr. Loomis did not have direct information on the situation, and Mr. Fyock was not available, nor would he be available until March 29. The claimant then wrote a two-week notice of resignation, which included no reason for quitting, which she put on Mr. Fyock's desk. A short time later she again approached Mr. Loomis; and when he again could not give her a satisfactory response, she stated to him that she was quitting, and then left.

On March 31 the claimant came in to pick up her check and to inquire as to what was happening with her job. Mr. Fyock responded that he considered her employment ended by a voluntary quit, as she had left stating she was quitting before the end of her shift and had not returned for scheduled shifts thereafter.

The claimant had been taking medication for anxiety since December 8, 2006. Her doctor noted that this was for stress "that she (the claimant) related back to situations at work . . . She reported that work stress was bothering her quite a bit. . . . She has also had occasion to take some pain treatment . . . that can, at times, have effect on her mood and affect."

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 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 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. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). 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. 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. 871 IAC 24.25(21), (23). The claimant has not established that the employer had a duty to inform her of the aberrant behavior referencing her of the kitchen manager; the employer had at least a good-faith belief that the information was confidential. The claimant has not demonstrated any specific harm or threat of harm to her as a result of the incident. While the claimant's work situation was perhaps not ideal, she 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.

To the extent the claimant asserts her quitting was due to a work-related medical condition, she has not presented competent evidence showing adequate health reasons to justify her quitting.

Iowa Code § 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:
>
> d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.26(6)b provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (6) Separation because of illness, injury, or pregnancy.
>
> b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.
>
> In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable

work which is not injurious to the claimant's health and for which the claimant must remain available.

The information from the claimant's doctor does not show he concluded her condition in fact had been caused or aggravated by the work situation, but rather recounts only what was related to him by the claimant. Further, there is no indication that he recommended quitting unless changes were made in her work situation. Finally, before quitting, the claimant did not inform the employer that as a result of the health problem, she needed an accommodation and that she intended to quit unless the problem was corrected or reasonably accommodated. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The representative's May 4, 2007 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of March 27, 2007, 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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/kjw/kjw