IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SYLVIA MEZZELL
Claimant

TRANSITIONAL SERVICES OF IOWA INC
Employer

APPEAL NO: 19A-UI-04360-TN-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/28/19
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Transitional Services of Iowa, Inc. filed a timely appeal from a representative's unemployment insurance decision dated May 17, 2019, (reference 01) which held Ms. Mezzell eligible to receive unemployment insurance benefits, finding that she quit work on January 2, 2019 because of detrimental working conditions. After due notice was provided, a telephone hearing was held on June 21, 2019. Claimant participated. Employer participated by Ms. Kris Steed, Director and Ms. Angela Moerke, Supervisor. Claimant's Exhibits 1 was admitted into the hearing record.

ISSUE:

The issue is whether the claimant left her employment with Transitional Services of Iowa, Inc. with good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having considered the evidence in the record, the administrative law judge finds: Sylvia Mezzell was employed by Transitional Services of Iowa, Inc. from April 16, 2016, when the company was acquired by new owners, until January 2, 2019 when Ms. Mezzell quit employment. Ms. Mezzell worked as a full-time behavioral health specialist and was paid by the hour. Her duties included visiting with adolescent clients at home locations providing counseling to the clients. Her immediate supervisor was Angela Moerke.

In October 2018, Ms. Mezzell had filed a complaint with Osha because her belief that the company had not supplied sufficient and required Osha information to employees about work-related topics such as contact with communicable diseases, airborne pathogens, domestic violence, etc. Subsequently, the company provided an electronic copy of portions of the Osha manual. The company then sent an email to employees requiring them to acknowledge that they had received the manual specifying a very short period of time to do so. Ms. Mezzell had responded to the company email.

Ms. Mezzell responded to the company email with an email questioning the employer's expectation that employees could read the manual in such a short period of time and inquiring

about how employees should bill the company for the time spent. Ms. Mezzell copied other similarly situated employees of the company in her response email. The claimant believed that the questions that she was asking management were pertinent to other employees who were doing the same work for the company and therefore included them in her response email.

Management responded when scheduling Ms. Mezzell to meet with her supervisor, the facility manager and the company owner. During the meeting, the claimant was questioned about the appropriateness of her response and the appropriateness of including other employees in her response. Shortly thereafter, the claimant was summoned to a meeting with Pamela Ingram, the company owner, the claimant's lead facility director, and her supervisor Ms. Moerke. In the meeting Ms. Mezzell was questioned about her work hours and job dissatisfaction. During the meeting, Ms. Mezzell questioned management about the lack of information that had been provided by the company by Osha information, and lack of Osha information on communicable diseases. The employer also questioned the claimant about ongoing issues of time reporting and Ms. Mezzell believed that she was properly claiming work hours for the preparation time before counseling. The company disagreed, considering time to be non-billable hours. Ms. Mezzell believed that she was being retaliated against because of her previous Osha complaint and informed Osha of her beliefs.

During this time, the employer was implementing changes in time reporting and Ms. Mezzell was reluctant to acknowledge changes based upon her previous agreement of hire with the company's previous owners.

Ms. Mezzell was summoned to another meeting with her supervisors, the facility manager and the owners on November 27, 2018 wherein Ms. Mezzell was questioned about the same issues on November 29, 2018 when claimant was notified that the employer desired an additional meeting with Ms. Mezzell.

On December 10, 2018, the claimant was informed by another worker that Osha training had taken place on November 21, 2018 and that all other workers had attended the meeting in person or by electronic zoom participation. The other worker informed Ms. Mezzell that Osha pamphlets and information had been disseminated to the employees attending the Osha meeting. Ms. Mezzell had not been informed of the meeting, invited to it, provided the information that had been disseminated, or told about the meeting by management. The claimant was also informed on December 10, 2018 by management, she would be required to report to the company offices in person for a two hour period each week and supervised by Ms. Moerke, and reporting direct and indirect working hours.

Ms. Mezzell began a medical pre-approved medical leave of absence and upon her return, quit employment by stating that she was leaving due to "job burnout." Claimant left employment with the company in an amicable way exchanging pleasantries and hugs with her supervisor and the facility manager.

It is the employer's position that Ms. Mezzell was not singled out for any disparate treatment or retaliation, but the company's intent was only to meet with the claimant on these occasions to better understand Ms. Mezzell's concerns and to address them. While the employer further asserts that Ms. Mezzell's billing hours for preparation had far exceeded those of other employees doing similar jobs for the company and therefore the company was concerned about her billing hours. The employer further explains that the notice to employees to acknowledge the receipt of the Osha manual and to do so within a very short time, was sent out in error and that the true intent was for employees only to acknowledge that they had received an electronic copy of the manual. The employer further explains that although a meeting was held in Osha

training and pamphlets supplied to other workers, the claimant's exclusion from the meeting while all other employees attended was accidental. It is the employer's belief that because Ms. Mezzell left her employment on January 2, 2019 in an amicable way dispels the claimant's allegations of inappropriate disparate treatment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes good cause for leaving employment attributable to the employer. It does.

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(21) 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:
>
> (21) The claimant left because of dissatisfaction with the work environment.

Iowa Admin. Code r. 871-24.26(4) 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:
>
> (4) The claimant left due to intolerable or detrimental working conditions.

When a person voluntarily quits the employment due to dissatisfaction with the work environment or inability to work with other employees, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21)(6). 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). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d 213 (Iowa 2005).

In the case at hand, the employer had disputed Ms. Mezzell's claims for pay for the time she spent preparing for counseling sessions with company clients, however Ms. Mezzell believed that her submissions were paid for work of that nature. Based upon the agreement of employment she had entered into with the company prior to the company being later purchased by new owners. Ms. Mezzell had also been concerned about the possibility of communicable diseases or working with clients. When no information on the subject was available from the employer Ms. Mezzell believed that information could have been obtained from Osha and complained to Osha that the information was lacking.

After Ms. Mezzell's complaint to Osha, Ms. Mezzell was required to attend mandatory meetings that appeared to be disciplinary in nature wherein she was questioned by her supervisor and manager but also by company owner. When a meeting was set with Osha, Ms. Mezzell was excluded from the meeting although other similar situated company workers participated both in-person and by Skype. Ms. Mezzell was not informed of the meeting and was not provided some of the information that was provided by Osha although that is what she had requested from the company and by her complaint to Osha. When Ms. Mezzell continued to be the subject of both observation by management at a level that was not imposed by other employees by management, Ms. Mezzell reasonably concluded that she was being signaled out for increased scrutiny because she had filed a complaint with Osha. When Ms. Mezzell and other employees were informed that the company was unilaterally changing vacation pay and employees were required to sign off their acknowledge of the change, she believed that the company would soon change the way she had been paid hourly and then she acknowledged the change, the new result agreement of hire was in effect when she began employment would be rescinded. After considering all of these factors, Ms. Mezzell quit her employment with the company.

Although the administrative law judge is cognizant that employers position that the meeting and inquiries were intended to resolve a problem, it is the effect on the employee not the intention of the employer to be used as the basis to determine whether working conditions were intolerable or detrimental. Based upon the evidence in the record, the administrative law judge concludes that a reasonable person would have quit under the circumstances. The claimant has sustained her burden of proof in establishing that she left employment with good cause attributable to the employer. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's unemployment insurance decision dated May 17, 2019, reference 01 is affirmed. Claimant left employment with good cause attributable to the employer. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

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Terry P. Nice
Administrative Law Judge

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Decision Dated and Mailed

tn/scn