

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY M LINEHAN
Claimant

L&A LLC
MEDIA-QUEST
Employer

APPEAL NO. 08A-UI-07103-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/01/08 R: 03
Claimant: Respondent (2-R)

Section 96.5(1) – Quit
Section 96.6(2) – Timeliness

STATEMENT OF THE CASE:

The employer, L&A LLC, filed an appeal from a decision dated June 25, 2008, reference 01. The decision allowed benefits to the claimant, Kelly Linehan. After due notice was issued, a hearing was held by telephone conference call on August 20, 2008. The claimant participated on her own behalf and with a witness, Hattie Hawkins. The employer participated by Partners Bill Lehman and Steve Allsop. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the appeal is timely and whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

The decision in this case was issued on June 25, 2008, and sent to the employer's address of record. The employer's place of business was underwater due to the floods in Cedar Rapids, Iowa, and the mail was being held at a post office. Another business, Sign Productions, which was housed at the same address, picked up the mail for both businesses, and took it to another location in Marion, Iowa, without notice to Media-Quest. Sign Productions did not forward the decision, and other mail, to Media-Quest until July 25, 2008. The employer filed an appeal on August 1, 2008, after consulting with Iowa Workforce Development as to what course of action he should take since the appeal deadline had passed.

Kelly Linehan was employed by Media-Quest from November 5, 2007 until May 29, 2008 as a full-time sales representative. On May 8, 2008, she brought a complaint of sexual harassment to the attention of Partner Bill Lehman against another employee, Ron Freeman. She played for him a recording she had made and Mr. Freeman was discharged the same day. A few hours later, Ms. Linehan gave a verbal resignation to Mr. Lehman saying she believed Partner Steve Allsop would retaliate against her because he had been a life-long friend of Mr. Freeman. He had not said or done anything to her prior to her submitting her resignation, or afterward, that she considered to be retaliatory in nature. Her separation date of May 29, 2008, was fixed at a later date after the verbal notice.

Kelly Linehan has received unemployment benefits since filing a claim with an effective date of June 1, 2008.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The employer did not receive the decision before the ten-day period had already lapsed. An appeal was filed within a week of the actual receipt of the decision and the administrative law judge concludes it should be accepted as timely.

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.

The claimant resigned because she feared Partner Steve Allsop would retaliate against her because her complaints had caused the discharge of his friend, Ron Freeman. Ms. Linehan based this only on conjecture and how she believed she would react in a similar situation, not on anything actually said or done by Mr. Allsop.

The claimant has the burden of proof to establish she had good cause attributable to the employer for quitting, and she has failed to present any evidence to support any good cause. The employer acted promptly and decisively in response to her complaint of sexual harassment and discharged the offending person. It appears the employer was in a no-win situation because the claimant would have quit if Mr. Freeman had not been discharged, but quit anyway when the offending party was terminated due to her complaint.

The record establishes the claimant did not have good cause attributable to the employer for quitting. Her personal, unsupported belief she would be retaliated against is insufficient in the absence of any actions by Mr. Allsop. The claimant is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of June 25, 2008, reference 01, is reversed. Kelly Linehan is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw