IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JENNIFER M RIEGEL
916 E RAILROAD
DES MOINES IA 50309

MARKETLINK INC
ATTN CARLA PEARSON
4305 FLEUR DR
DES MOINES IA 50321

Appeal Number: 05A-UI-03191-RT
OC: 08-15-04 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Jennifer M. Riegel, filed a timely appeal from an unemployment insurance decision dated March 25, 2005, reference 03, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on April 12, 2005, with the claimant participating. Louise Bradley, Operations Manager, participated in the hearing for the employer, Marketlink, Inc. Carla Pearson, Human Resources Office Administrator, was available to testify for the employer but not called because her testimony would have been repetitive and unnecessary. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time telemarketer from June 1, 2004 until she was separated from her employment on January 28, 2005. On that day, the claimant met with the Operations Manager, Louise Bradley, the employer's witness, and was given a developmental plan for performance. The claimant was also given a formal warning indicating that if significant change did not occur she could be subject to further discipline including termination. The claimant left the meeting and remarked to a co-worker that she was going to be fired and instead she was leaving and left at 2:00 p.m. during her break. The claimant's shift did not get over until 9:00 p.m. The claimant has never returned to work. During the meeting with Ms. Bradley, the claimant was never told that she was fired or discharged nor was she ever told that firing or discharging was imminent.

On Monday, January 31, 2005, the claimant called and spoke to Ms. Bradley and told her that she was not returning to work and asked if Ms. Bradley needed the claimant to fill out any paperwork concerning her resigning or resignation. Ms. Bradley said no, since the claimant walked off the job the employer was treating that as a quit.

In July 2004, the claimant was given an initial developmental plan which she successfully completed. That developmental plan did not carry a formal warning indicating that if significant change did not occur the claimant could be further disciplined including termination. The claimant had some concerns about preferential treatment of various employees and had expressed these concerns to Ms. Bradley on a number of occasions. Ms. Bradley always rectified any problems the claimant had. At one point the claimant was moved from one location to another to make her more comfortable. Even the claimant remarked to Ms. Bradley that the move had helped and made her more comfortable. During these expressions of concern, the claimant did indicate an intention to quit. However, the claimant separated because of the meeting with Ms. Bradley and her alleged belief that she would be discharged.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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(21)(28)(33) 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.

(28) The claimant left after being reprimanded.

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

The first issue to be resolved is the character of the separation. The employer's witness, Louise Bradley, Operations Manager, testified that the claimant quit when she walked off the job before her shift was over on January 28, 2005 and then called back on January 31, 2005 and asked if there was paperwork that she needed to complete regarding resigning or resignation. The claimant does not specifically maintain any particular type of separation. The claimant testified that she believed she was going to be fired but conceded that no one had told her that she was going to be fired. The claimant even finally conceded that she was not sure she was going to be fired. On the evidence here, the administrative law judge is constrained to conclude that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant left her employment voluntarily on January 28, 2005. It is uncontested that the claimant left work at 2:00 p.m. in the middle of her shift on January 28, 2005 and never returned to work thereafter. It is also uncontested the claimant was not told at that time that she was fired or discharged or that firing or discharging was imminent. The claimant was given a developmental plan with a formal warning indicating that unless there was significant change, the claimant might be further disciplined up to and including termination but she was not facing imminent discharge nor was she forced to resign or face discharge. Further, and more compelling, the claimant told a co-worker that she was going to be fired and, therefore, she was leaving. This certainly seems to be a quit. Finally, and most compelling, the claimant called Ms. Bradley back on January 31, 2005 and told her that she was not returning to work and asked if any paperwork needed to be filled out concerning her resigning or a resignation. If the claimant believed that she had been discharged or was facing discharge on January 28, 2005 she would not have called Ms. Bradley on January 31, 2005. The claimant even concedes she used the word resigning or resignation. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily on January 28, 2005. The issue then becomes whether claimant left her employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant testified that she separated from her employment because she believed that she would be discharged as a result of the developmental plan and formal warning. However, the administrative law judge concludes that all that happened on January 28, 2005 was that the claimant was given a reprimand or written warning. Leaving work voluntarily for a written reprimand or warning is not good cause attributable to the employer. The administrative law judge also notes specifically that the claimant was given a developmental plan in July 2004, which she successfully completed. It may well have been possible the claimant could have successfully completed the developmental plan given to her on January 28, 2005. Leaving

work voluntarily because the claimant felt that her job performance was not to the satisfaction of the employer when the employer had not requested the claimant to leave and continued work was available is also not good cause attributable to the employer. Finally, there was some evidence that the claimant was dissatisfied with her work environment but again this is not good cause attributable to the employer.

The administrative law judge concludes that there is not a preponderance of the evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that she was subjected to a substantial change in her contract of hire. There was some evidence that the claimant was dissatisfied with some alleged preferential treatment of employees and that she expressed some concerns to the employer about these matters and even threatened to quit. However, even the claimant conceded that she did not quit because of these matters. Further, the claimant testified that the preferential treatment simply made her feel that she was treated poorly or differently than others. The administrative law judge does not believe that this establishes intolerable or detrimental working conditions by a preponderance of the evidence. Finally, the employer addressed all of the claimant's concerns even at one point moving the claimant to another location which even the claimant concedes made her more comfortable.

In summary, and for all of the reasons set out above, the administrative law judge concludes the claimant left her employment voluntarily on January 28, 2005, without good cause attributable to the employer and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

DECISION:

The representative's decision of March 25, 2005, reference 03, is affirmed. The claimant, Jennifer M. Riegel, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer.

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