IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KIMBERLY B CLARKSON
Claimant

QWEST CORPORATION
Employer

APPEAL NO: 07A-UI-08499-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/21/07 R: 02
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Qwest Corporation (employer) appealed a representative's August 29, 2007 decision (reference 02) that concluded Kimberly B. Clarkson (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 19, 2007. The claimant participated in the hearing. Terry Newman of Barnett Associates appeared on the employer's behalf and presented testimony from one witness, Jay Gregerson. During the hearing, Claimant's Exhibits A and B were entered into evidence. 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:

The claimant started working for the employer on February 12, 2007. She worked full time as a consumer sales and service associate in the employer's Des Moines, Iowa call center. Her last day of work was July 18, 2007.

On July 19 the claimant called in to the employer's dispatch office to report that she would not be into work, that she was going to the hospital as she was experiencing shortness of breath. It was ultimately determined that she was suffering from a panic or anxiety attack. She was given medication and a note excusing her from work that day and July 20, and was directed to see her personal physician for follow-up. On July 20 the claimant again called in to the dispatch center to report she would not be into work.

On Monday, July 23, prior to the claimant's shift her supervisor called her to inquire if she was going to be at work that day. She explained what had been going on with her condition, that she still needed to follow up with her own doctor, and indicated that she did not feel well enough to come in to work that day either. The supervisor appeared to be skeptical as to the validity of

the claimant's mental health issues as to being an acceptable reason for being absent. He informed the claimant that the employer would be sending out a letter to her that if she did not return to work by the following Monday, July 30, that she would be deemed to have quit her position. The claimant responded that she did not foresee any reason to think she would not be able to return to work by then. The supervisor further advised her that "even if" she returned, that there would be "repercussions" to her having been absent.

After the conversation with her supervisor, the claimant determined that he was too insensitive to the situation and had in effect threatened her job by threatening "repercussions," and she could not or would not return to work under his supervision. She felt his attitude and further interaction with him would only aggravate the stress she was experiencing and contribute to her health problems, although she had not been advised to that effect by a doctor. She therefore determined to end her employment by deciding not to return to work by July 30. She did not contact anyone with the employer to advise them of her decision not to return.

Contributing to the claimant's decision to end her employment was that she and other team members had been having other problems with this same supervisor beginning approximately June 1, 2007. For example, the supervisor had on occasion come to the claimant's desk and rifled through papers on the desk, including her personal papers, both while the claimant was on the phone trying to assist a customer and while the claimant was away from her desk. On June 26 the claimant had contacted the next higher manager, Mr. Gregerson, by email, complaining that she found her supervisor's management style to be "offensive and selfish, that he shows a lack of any empathy for his employees and manages to demotivate this team and degrade individuals publicly." She suggested that the supervisor "should certainly use a [course or] two on leadership." Mr. Gregerson responded minutes later, thanking the claimant for the feedback and inquiring as to whether something had happened that day. The claimant then replied that she saw "little things all the time but today we are having a disagreement and I am already on my way back to my cubicle and he wants to publicly announce "Kim you need to take a seat' (to my back) that is being overdramatic and flexing his usual management style in a manner that is [unnecessary] and uncalled for but I will add expected from him."

The claimant had further understood that by the first of July other members of her team had forwarded complaints regarding the supervisor and she understood that higher members of management were going to be meeting with members of the team in a week or two. By July 23 she was not aware of whether there had actually been any other meetings between team members and higher management regarding the supervisor. She had also on about June 28 put in a request to be placed on another team when teams were to be switched after the end of July. By July 23 she had not heard whether she would be switched to another team or would be left on the same supervisor's team. She concluded that the employer had not acted quickly enough to address the problems with the supervisor and determined not to return to the employer. Even though Mr. Gregerson had been responsive to her prior contact and complaint, she did not contact him regarding her concerns after her July 23 conversation with the supervisor. In fact, the employer had determined to grant the claimant's request for assignment to another team to be effective August 6. Further, the employer was indeed making additional inquiries regarding the supervisor, and in fact the supervisor's employment was terminated effective August 6.

The claimant established a claim for unemployment insurance benefits effective January 21, 2007. She filed an additional claim effective August 5, 2007. The claimant has received unemployment insurance benefits after the separation from employment in the amount of $2,274.00.

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). Quitting because a reprimand has been given or is threatened to be given is not good cause. 871 IAC 24.25(28). While the claimant's work situation was 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).

Further, while a claimant does not have to specifically indicate or announce an intention to quit if his 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 he 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." Under this logic, if in the alternative the claimant demonstrates that the employer was independently aware of a condition that is clearly intolerable, unlawful, or unsafe, there would be no need for a separate showing of notice by the claimant to the employer; if the employer was already aware of an obvious problem, it already had the opportunity to address or resolve the situation. This is particularly the case where, as here, the claimant is asserting some level of medical or heath consequence from the work-related condition. Iowa Code § 96.5-1-d; 871 IAC 24.26(6)b. In this case the claimant did not provide the employer with adequate notice and particularly did not allow the employer adequate opportunity to deal with the general problem of which the employer was aware. The claimant has not satisfied her burden. Benefits are denied.

Iowa Code § 96.3-7 provides:

> 7. Recovery of overpayment of benefits. 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.
>
> 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's August 29, 2007 decision (reference 02) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of July 30, 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.

_____
Lynette A. F. Donner
Administrative Law Judge

_____
Decision Dated and Mailed

ld/pjs