IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARY KNEBEL
Claimant

ABCM CORPORATION
Employer

APPEAL NO: 12A-UI-03758-BT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/26/12
Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

ABCM Corporation (employer) appealed an unemployment insurance decision dated April 2, 2012, reference 01, which held that Mary Knebel (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 26, 2012 at 8:00 a.m. The employer participated through Administrator Craig Allen and Attorney David Schrock. The claimant participated in the hearing. After the hearing started and most of the preliminary statements were made, the claimant then stated that her attorney had not been contacted. The administrative law judge advised the claimant that no such information had been provided and she claimed that she had provided it.

The claimant subsequently provided the attorney's first name but could not provide the last name and she provided a telephone number. When that number was called, a recording stated that the law office did not open until 8:30 a.m. and no message could be left. The claimant then provided a different number and said she just hung up with Luke. The administrative law judge called the second attorney number two times but could only leave a message each time. The hearing went forward and the Appeals Section received no return call from the attorney by the time the record closed at 9:17 a.m. 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:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The employer is a nursing home and rehabilitation center. The claimant was hired on June 28, 2008 as a full-time licensed practical nurse and worked through her last day of employment on February 8, 2012. She voluntarily quit on February 28,

2011 due to medical problems caused by her employment. The claimant said she had been "enduring almost a year of harassment" by Director of Nursing (DON) Cindy Frank, her two daughters, and the administrator's wife. She said, "They were spreading rumors about me saying I was sleeping around with everybody and family members and this and that. And then, they would purposely go out of their way to try and get me in trouble to a point I was being called in the office every day. My medical condition got extremely bad to the point I couldn't function there cuz I was diagnosed with severe anxiety due to stress from my workplace." The claimant said she was advised to quit by, "my doctor, my lawyer, my psychiatrist, my therapist, everything, I didn't even have to see people like this until all this stuff started."

The employer's records show the claimant exhausted her leave under the Family Medical Leave Act (FMLA) in either January or February 2012. The claimant testified that her doctor told her to quit on February 22, 2012 and she said the employer has a copy of her medical records which show her doctor told her to quit. The employer has not received any documentation establishing the claimant's physician advised her to quit. No medical documentation was provided for this hearing. The claimant said she provided medical documents to the Agency for the fact-finding interview, but there were no medical records found with the fact-finding file.

The claimant offered testimony about a phone call she received from ARNP Michelle Kunkle on October 10, 2011 while she was at her son's football game. Ms. Kunkle told the claimant how the DON was spreading rumors about the claimant sleeping with the DON's brother. The claimant became so upset that she had to leave the football game. She said her husband called the DON to ask her why she said that about the claimant and the DON reportedly told her husband to, "Fuck off and never call her house again." She did admit she questioned the DON as to whether she said that and the DON denied it.

The claimant testified that she was called into the office on February 5, 2012 and was accused of harassing another staff member. The DON asked why the claimant called her a lesbian and the claimant said she did not do that but just asked them to stop being affectionate or something to that effect. The claimant said from that point on, "She tried to get me in trouble." She said that she would go to work and no one would talk to her because they were afraid of getting in trouble, but she also testified that she was going to have 30 or 40 witnesses testify against the employer in her civil case that she said she filed in August 2011. The employer has not received notice of any civil suit, but the claimant has filed a workers' compensation claim.

Although there does not appear to be any advance notice of her resignation, the employer was aware of problems between the claimant and the DON. The employer's attorney asked the claimant if the administrator took the DON off as the claimant's supervisor and she said, "If that's what he wants to claim I guess that's what, but he didn't do it for that reason. It wasn't done for the reason he is lying about." She then reported to a new shift supervisor, "That already didn't like me cuz they told her I was nothing but trouble when she walked through the door. So that's why she didn't like me from the get go." The administrator conducted the claimant's performance review on July 7, 2011. The employer also moved the claimant to a wing in which she had less responsibility, but the claimant said it was more responsibility and also that she was placed in a "babysitting wing." The claimant testified that she requested to be transferred and was not allowed to transfer out due to her bad attendance. However, the employer's evidence confirmed that on October 12, 2011, Steve Dikey offered the claimant a transfer to another facility and she turned it down, stating that she cared too much for her residents.

The claimant contacted the corporate office on February 23, 2012 and requested to cash in her 401K. The corporate office told her that she could not cash in her 401K until she was no longer

working for the employer. The claimant filled out an application to cash in her 401K and indicated on that form that she separated from her employer on February 22, 2012, even though she did not talk to the employer about leaving until February 28, 2012.

The claimant's final comments in the hearing were as follows: "They're trying to make me look like I purposely went out of my way to get sick on them. Well they did this to me so that's their fault not mine. And yes there is a civil suit, my lawyer did, I have that laying right here, sent Mr. Shrock a letter that said that if this has to go to court, he's going to bring a lot of pizazz to the case because I have that many witnesses. So I'm, I'm done, I have my three lawyers, they're going to take care of it. I'm good."

The claimant filed a claim for unemployment insurance benefits effective February 26, 2012 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

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 quit her employment on February 28, 2012 due to what she said was an intolerable working environment. 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 (Iowa 2005).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Florida App. 1973). The claimant does appear to be overly sensitive and was quite confrontational in the hearing. Before the hearing really got started, the claimant said something to the effect of, "Well nothing like ganging up on Mary again!" The administrative law judge asked her what she said and the claimant said she was just talking to herself. She made a comment during her cross examination about the employer witness lying. And when it was time for the employer witness to testify in the hearing, the claimant said, "We can listen to his lies now" and when she was asked what she said, she repeated, "Now we can listen to his lies." The administrative law judge told the claimant her comment was totally inappropriate and she said, "Well it's the truth!"

The evidence provided by the claimant does not rise to an intolerable or detrimental work environment. It is her burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not satisfied that burden. Benefits are denied.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated April 2, 2012, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw