

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN L SPRING
Claimant

APPEAL NO: 07A-UI-02416-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCGRAW-HILL INC
Employer

**OC: 12/24/06 R: 04
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Karen L. Spring (claimant) appealed a representative's March 7, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from McGraw-Hill, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 29, 2007. The claimant participated in the hearing and was represented by Ed Spring, who also offered testimony on her behalf. Steven Zaks of Barnett Associates, Inc. appeared on the employer's behalf but presented no witnesses or 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:

After a prior period of employment with the employer which ended on December 1, 2006, the claimant returned to working for the employer on January 22, 2007. She worked full time as an administrative assistant to the manager of production in the employer's Dubuque, Iowa, book production facility. Her last day of work was February 9, 2007.

The claimant's prior position had been as a paging specialist. After the December 1, 2006 separation from that position, the claimant learned that the administrative assistant position was going to be coming open. She obtained a job description and made application, and was hired. When she began working, she was informed by the person who was leaving the position that she would have one week to train the claimant. During that week, the claimant learned that the position was being expanded beyond what the prior duties and job description for the position had been to include duties relating to web page editing and other information technology (IT) functions, at least in part due to the recent elimination of a prior IT position. The functions that would have been required necessitated special training which the claimant did not possess.

On Sunday, January 28, the claimant contacted the production manager by phone and expressed her concerns about the increased web and IT duties that were beyond the duties described in the job description and were beyond what the prior administrative assistant had normally done. She indicated to the production manager that she did not have the necessary training and she was not able to perform those duties. The production manager responded that she took that as the claimant giving notice of resignation, to which the claimant conceded. She followed up with an email to the production manager a few days later confirming her last day of work would be February 9.

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 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 24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

“Good cause attributable to the employer” does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). A “contract of hire” is merely the terms of employment agreed to between an employee and an employer, either explicitly or implicitly; for purposes of unemployment insurance benefit eligibility, a formal or written employment agreement is not necessary for a “contract of hire” to exist. The change in the claimant’s duties significantly beyond those that had been expected in the position in the past and which were outlined in the job description at the time of her hire was a substantial change in the claimant’s contract of hire. Dehmel, supra. To the extent notice to the employer to give an opportunity to address the problem might be necessary, the claimant satisfied that requirement as well. Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005). It was not necessary for the claimant to specifically request training that might qualify her, the employer was on notice that she was indicating she did not have the necessary training and had an affirmative duty to offer that training if it wished to preclude the claimant’s lack of training or qualifications from being an excusable reason for her resignation. Benefits are allowed.

DECISION:

The representative's March 7, 2007 decision (reference 01) is reversed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw