IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JOLENE A JACKSON
Claimant

SDH SERVICES WEST LLC
Employer

APPEAL NO: 10A-UI-02616-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/17/10
Claimant: Respondent (2/R)

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

STATEMENT OF THE CASE:

SDH Services West, L.L.C. (employer) appealed a representative's February 8, 2010 decision (reference 01) that concluded Jolene A. Jackson (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 April 2, 2010. The claimant participated in the hearing. Jon Broughton appeared on the employer's behalf and presented testimony from one other witness, Dick Hesby. 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 working for the employer's predecessor on the account, the claimant started working for the employer on March 15, 2008 as chef/manager in the food service account at the employer's Mason City, Iowa business client. She worked full time on a salary basis. Her last day of work was January 15, 2010. She voluntarily quit on January 19, 2010. Her stated reason for quitting was a "hostile work environment."

At least six months prior to January 19, the claimant had given notice that she wanted to find a position outside of Mason City, and was looking to advance in her career, possibly by pursuing additional training. Beginning in about December 2009 the claimant felt there were issues that caused her to accelerate her decision to leave. On December 28 she stepped up her efforts to pursue her efforts to find another position within the company into which to transfer.

On December 9, a day with considerable snowfall, there was a difference of opinion and communication between the claimant and the primary on-site business client contact person regarding what food services would be provided for the business client's employees. As a result of being unhappy with the claimant's response and communication, on December 10 the

business client contact person requested that the employer provide better oversight of the Mason City operation with more frequent visits. As a result, the claimant was instructed that any future discussions and decisions regarding the food service's operation in times of poor weather were to be made through Mr. Broughton, the employer's general manager for food service operations for that business client, even though he was based out of the Des Moines location. The claimant was unhappy that her decisions were being questioned and her autonomy was being reduced. She was also disturbed by an incident where, citing an inability to locate the claimant on the premises, the business client determined the claimant's location on the premises by tracking her security badge.

Even in the fall of 2009 there had been a number of money handling and banking issues such as late deposits which the employer had addressed with the claimant. To follow up on some of those issues, as well as to satisfy the business client's request that the employer's management make more frequent visits to the Mason City operation, on January 15 Mr. Broughton and Mr. Hesby, the district manager, had left Des Moines en route to the Mason City location to perform a surprise audit. The claimant had reported for work on January 15 between 5:30 a.m. and 6:00 a.m., but had gone home sick by about 9:00 a.m., prior to learning that Mr. Broughton and Mr. Hesby were coming to that location. When she learned that they were at the Mason City location, she concluded that they had taken advantage of her absence to perform a surprise audit without her participation, assuming that they had only decided to go to Mason City upon learning that she was going home sick. This assumption was incorrect, as they were already en route when the claimant decided to go home sick.

The Mason City food service was closed on January 18 due to a holiday. As a result, the next day the claimant would normally have worked was January 19. However, that morning she sent the employer an email indicating that she was quitting immediately, as she felt the surprise audit and increased scrutiny of the operation and her decisions was creating a hostile work environment.

The claimant established a claim for unemployment insurance benefits effective January 17, 2010. The claimant has received unemployment insurance benefits after the separation.

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.

Rule 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 and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). 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. 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), (22). Quitting because a reprimand has been given is not good cause; the administrative law judge understands this to apply to other disciplinary measures as well, such as surprise audits and increased scrutiny. 871 IAC 24.25(28). The claimant 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). The claimant has not satisfied her burden. Benefits are denied.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's February 8, 2010 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of January 17, 2010, 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/css