IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARCI PAULSON
Claimant

VAN WYK FREIGHT LINES INC
Employer

APPEAL NO: 09A-UI-09206-BT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/17/09
Claimant: Respondent (2/R)

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

STATEMENT OF THE CASE:

Van Wyk Freight Lines, Inc. (employer) appealed an unemployment insurance decision dated June 24, 2009, reference 01, which held that Marci Paulson (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 July 14, 2009. The claimant participated in the hearing with Attorney Brad McCall. The claimant's step-son Kaden Paulson participated in the hearing and step-son Greg Paulson was present but offered no testimony. The employer participated through Marcy Van Wyk, Director of Administration and Safety; Mike Kriegle, Rates Manager; and Brian Wunn, Dispatcher. 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 considered all of the evidence in the record, finds that: The claimant was employed as a full-time rate and revenue clerk in from August 8, 2008 through May 21, 2009 when she voluntarily quit. She worked the evening shift and she and three other women had problems getting along. The claimant had the most issues with Barb Ebert but there were also problems with Patty Nelson and Summer Wilson. The claimant was upset that Barb Ebert marked on the bills of lading, although it did not actually have any effect on her own job duties since she could use a different colored marker for her own marking. The claimant testified that Ms. Ebert ignored her questions and was rude to her.

Ms. Ebert left a written message for the claimant once that said, "I am not a that and believe me, I promise , Robin will know me now." Robin was the claimant's ex-husband but the claimant was unable to shed any more light on what the note meant. Ms. Wilson sent the claimant a text

message on February 6, 2009 that said, “we fucking got her now!” When the claimant asked her about it, Ms. Wilson said she was not supposed to send it to the claimant.

The claimant complained to her supervisor Mike Kriegle about Ms. Ebert on several occasions. There was an incident on May 19, 2009 involving all four employees. Ms. Ebert accused the claimant of taking a swing at her but the claimant denies that claim. Marcy Van Wyk, Director of Safety and Administration, held a meeting with all four women on May 20, 2009 and advised them if they could not get along, they were all going to be fired. After the meeting, Ms. Van Wyk talked to the claimant privately and asked her if she took a swing at Ms. Ebert. The claimant denied it and Ms. Van Wyk advised her that it was going to be placed in her file but her denial was also going to be included. The claimant became very upset and told Ms. Van Wyk that if it went in her file, she was going to quit. The claimant left early that night without permission but she did notify her supervisor that she was leaving. She testified that her husband had to bring her heart medication to her since the stress from work was so intense.

Brian Wunn worked the evening of May 21, 2009 as Ms. Ebert was not feeling well. The claimant told him earlier in the evening that she was going to quit. Later on that evening, the claimant’s step-son, Kaden Paulson, called her and said that Ms. Van Wyk was with his mother at a local bar and Ms. Van Wyk talked about the problems at work and said, “They all suck.” Ms. Van Wyk testified Robin Paulson asked her about the problems that week as if she had heard about them and Ms. Van Wyk responded with the inappropriate comment, although she did not name names. The claimant called Mr. Kriegle and told him she quit. She testified that he came to the work site and tried to talk her out of quitting for about an hour but Mr. Kriegle did not go to the work site on May 21, 2009.

The claimant filed a claim for unemployment insurance benefits effective May 17, 2009 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 § 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(6) 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 § 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 § 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:

(6) The claimant left as a result of an inability to work with other employees.

The claimant quit her employment on May 21, 2009 because a co-employee accused her of assault and the employer was going to note the allegation in the claimant's personnel records. The employer was also going to note that the claimant denied the allegation but that apparently did not make any difference. The claimant contends she quit her employment due to intolerable working conditions. 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).

The evidence does not establish the work conditions were intolerable but it does establish the claimant and three other employees could not get along. "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). In the case herein, the claimant appears to be overly sensitive. Although Ms. Van Wyk's comment to the claimant's husband's ex-wife on May 21, 2009 was inappropriate, that comment alone is insufficient to create an intolerable work environment.

The claimant's attorney contends the claimant quit due to medical problems caused by her employment. However, no medical documentation was provided and the claim was not substantiated. Furthermore, the claimant failed to inform the employer of her medical problems caused by work and failed to give the employer an opportunity to resolve her complaints prior to leaving employment. Consequently, if this were the reason for separation, it was without good cause attributable to the employer.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

Iowa Code § 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 § 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 June 24, 2009, 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/pjs