IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JAMIE L PANGERL
Claimant

HORIZONS UNLIMITED OF PALO ALTO CO
Employer

APPEAL NO: 07A-UI-08468-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/29/07 R: 01
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jamie L. Pangerl (claimant) appealed a representative's August 31, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Horizons Unlimited of Palo Alto County (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 3, 2007. The claimant participated in the hearing. Debra Hughes appeared on the employer's behalf with three other witnesses, Pam Beschorner, Kate Simonson, and Ed Hannagan. During the hearing, Employer's Exhibits One, Two, and Three 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 7, 2006. She worked full time as a residential instructor in the employer's group home program providing services for adults with disabilities. The claimant's normal work schedule had been 8:00 a.m. to 8:00 p.m. every other weekend and then two or three 4:00 p.m. to 12:00 p.m. shifts during the week. Her last day of work was July 23, 2007.

On or about July 21 the claimant, who was pregnant, provided the employer with a doctor's note dated July 18 advising that she needed to cut back on working and should limit herself to four hours no more than five days per week. Ms. Hughes, the employer's director, responded that the employer did not have four-hour shifts available at that time, and that if the claimant cut back to half-time she would lose her eligibility for full time employee benefits such as health insurance. The claimant then responded that she did not want to go to the part time schedule, that it was only a suggestion that she go part time, not a mandate. Ms. Hughes then asked the

claimant to her have her doctor provide a statement clarifying that fact. The claimant was also provided with the application for short-term disability through the employer's carrier. On July 23 the doctor provided another note which simply indicated that the claimant could "finish her last [three] days as previously scheduled then go to restricted work schedule."

The claimant came in on July 25 to discuss her options given the doctor's notes. Ms. Hughes told the claimant she did not qualify for FMLA (Family Medical Leave) and again told the claimant that it did not have a place for four-hour shifts currently in its schedule and that if she went to a part-time schedule she would not be eligible for the full-time benefits of health insurance. The claimant and/or her mother who was present asked if the claimant was being fired because she was pregnant and Ms. Hughes responded that no, she was not being fired, but since she was reducing her work status to part time she would no longer be available for full-time benefits.

On July 26 the claimant met with the employer's then consulting director. He further confirmed to the claimant that she was not fired but had only indicated there were not currently four-hour shifts available. He worked with the claimant on setting up a schedule of four-hour shifts with the claimant, and spoke with the claimant's immediate supervisor, Ms. Simonson, to further work up the schedule. Ms. Simonson put together a four-week schedule in which the claimant was scheduled for only five four-hour shifts per week. The consulting director further confirmed to the claimant that if she was dropping to 20 hours per week she would no longer qualify for full-time benefits including health insurance. He additionally told her that she could return to full-time status and to full-time benefits upon being released by her doctor after the birth of the baby.

The claimant was to have worked on the evenings of July 26 and July 27 but advised the employer that she was not able to work those shifts. Her first shift under the modified schedule was to have been July 31, but she called off for that shift. She was again to have worked a shift on August 1, but she called Ms. Simonson and told her that she was not going to work any further but might pursue the short-term disability; Ms. Simonson reminded the claimant to submit her paperwork. However, the claimant never submitted her application for short-term disability.

When the claimant did not submit the short-term disability papers, the employer sent her a letter on August 9 indicating that if she did not respond or file the papers by August 17 she would be deemed to have abandoned her job. The claimant did not receive the letter until August 20, but still did not respond to the employer upon receipt of the letter. The claimant had in fact affirmatively determined she was not going to continue her employment with the employer because she believed the employer had not been forthright with her and was being unfair by cutting her benefits because she could not work full time due to pregnancy, and she felt that if she submitted short-term disability papers she would have acquiesced to the reduction in health benefits.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct.

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.

The claimant asserts that her separation was not "voluntary" as she had not desired to end the employment; she argues that the employer discharged her on July 25 and that it was improper for the employer to reduce her to part time benefits because she could not work full time due to pregnancy. 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. The rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as when continued work with the employer was available and the employee has not been told they were discharged. 871 IAC 24.25.

The employer's testimony that the claimant was not told she was fired is more credible than the claimant's testimony that she was told she was discharged. The administrative law judge notes that the claimant further testified that she did not assert that the doctor's note limiting her to 20 hours was discretionary, not mandatory, and that she did not seek to maintain full-time employment in the face of the doctor's note to the contrary; however, if the claimant had not raised this issue, there would have been no need for the second doctor's note, which served to confirm that the restriction was mandatory, not discretionary. Further, it is clear even from the claimant's testimony that subsequent to the purported discharge she was told by the consulting director that she had not been fired, and in fact the employer proceeded to affirmatively pursue retaining her employment by working out the 20-hour work schedule.

The claimant chose not to act to preserve her employment with the employer; therefore, the separation is considered to be a voluntary quit. The claimant then 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 employer complied with the claimant's doctor's restrictions of a 20-hour work schedule. The employer treated the claimant the same as any employee who reduces their status from full time to part time, and who as a result is not eligible for full-time benefits. The claimant has not presented any basis for a good-faith belief that an employee who is not covered by FMLA and who reduces her status from full time to part time due to pregnancy and a doctor's recommendation is legally entitled to continue to be provided with full-time benefits by her employer. The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's August 31, 2007 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of July 29,

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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs