

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH K OWEN
Claimant

APPEAL NO: 10A-UI-00964-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

GAZETTE COMMUNICATIONS INC
Employer

OC: 12/13/09
Claimant: Appellant (1)

Section 96.5-1- Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed a representative's January 14, 2010 decision (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had voluntarily quit her employment for reasons that do not qualify her to receive benefits. An in-person hearing was held in Cedar Rapids on April 22, 2010. The claimant participated in the hearing. Ted Borelli and Shonna Woods appeared on the employer's behalf. Clara Oleson observed the hearing. During the hearing, Claimant Exhibits A and B and Employer Exhibits One through Five were offered and admitted as 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 her employment for reasons that qualify her to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer on November 27, 2001. The claimant worked as a full-time media consultant/sales representative. The claimant received a base salary plus commission for meeting various monthly, quarterly and yearly goals. Prior to June 1, 2009, an employee had to meet 100 percent of a monthly revenue goal to receive a commission. (Employer Exhibit Four.) The employer changed the commission structure as of June 1, 2009, so an employee would receive a commission for reaching 95 percent of the revenue goal. (Employer Exhibit Five.)

During the claimant's first three years of employment, she successfully met her revenue goals and earned commissions. (Claimant Exhibit A.) Starting in the winter of 2007, the claimant had problems meeting her revenue goals and earning commission as she had in the past. The claimant attributed her inability to meet monthly goals primarily because of the nation's economic issues. In 2008, the claimant earned commission in five out of twelve months. From January 1 to May 30, 2009, the claimant only earned a commission in May 2009. (Employer Exhibit Three.)

In June 2009, the employer restructured the territories media consultants covered. For the claimant this meant she retained one key or growth account, Nagle Lumber, and the University of Iowa, Mercy Medical Hospital and Riverside Casino were assigned to other sales representative(s). The employer also reduced the number of the accounts assigned to the claimant. The employer tried to emphasize they wanted growth of new accounts instead of maintenance of the status quo. As of June 1, Borelli became the claimant's direct supervisor.

When the claimant's revenue goal for August was 148 percent of what these accounts had generated in 2008, in addition to the loss of most of her previous accounts and three out of four of her growth or key accounts, she concluded the employer was trying to set her up to fail. In August, the claimant generated more revenue from the account she had been assigned than the accounts had generated in August 2008. Even though the claimant increased the revenue from these account she only made 72 percent of revenue goal the employer required her to make. (Employer Exhibit Three.)

On August 26, 2009, the employer gave the claimant a performance improvement plan. (Claimant Exhibit B.) In the past when employees received performance improvement plans, this was the first in discharging an employee for failing to comply with the steps in the performance improvement plan. Although the performance improvement plan only indicated the sales goals for July and August 2009 as a basis for the improvement plan, (Claimant Exhibit B), Borelli considered the claimant's work performance as of January 1, 2009. The claimant attributed her failure to meet her revenue goals in July and August to the drastic reduction of her accounts, including the three growth or key accounts, the employer's unrealistic revenue goal in August and the poor national and local economy. The claimant did not believe she would ever be able to meet the employer's revenue goals after her accounts had been changed.

On September 2, the claimant submitted her resignation indicating September 16, 2009, would be her last day of work. (Employer Exhibit One.) The claimant's last day was September 16, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code § 96.6-2.

The claimant asserts she quit because of a substantial change in her employment, which would qualify her to receive benefits. 871 IAC 24.26(1). The facts establish the employer changed the account she had in June 2009 and reduced the number of accounts assigned to her. The number of accounts assigned to her did not mean she would or would not meet her revenue goals since the revenue goals were based on the history of particular accounts. Even though the claimant had four growth accounts prior to June 1, 2009, she only met her revenue goal six month out of the last 18. The claimant's argument that without all the key or growth accounts prevented her from meeting her revenue goals is not supported by the facts.

The employer's emphasis was to develop new business. As a result of this new emphasis, key or growth accounts that took more time than other accounts were assigned to other employee(s). This left the claimant more time to attempt to develop and sell to the businesses she had been assigned. The claimant's argument that she was unable to meet the employer's revenue goals in 2008 and 2009 because of the economy and the 2008 flood are factors that

affected her sales. However, could the claimant have done more to meet her revenue goals is not known. It is also not known if she could meet her revenue goals with fewer accounts.

The employer's recognition that sales representatives were unable to meet 100 percent of their revenue goal, but were able to more easily meet 95 percent of the revenue goal led to the change in the commission structure. Even though the claimant did not believe the employer treated her fairly by drastically reducing her accounts, the reduction afforded the claimant more time to work these accounts and possibly generate more revenue than the previous year.

After the employer gave her the performance improvement plan, the claimant concluded the employer's goal was to end her employment. If the employer had not given the claimant the performance improvement plan, she would not have submitted her resignation on September 2. This was the final "slap in the face" for the claimant.

The law presumes a claimant voluntarily quits without good cause when she leaves after receiving a reprimand. 871 IAC 24.25(28). The claimant considered the performance improvement plan the equivalent to a reprimand. The claimant established compelling reasons for quitting. Even though the claimant knew employees had been discharged in the past after receiving a performance improvement plan, it is speculation that she would have been unable to achieve the goals listed in the plan. It is also speculation that the performance improvement plan with Borelli's assistance would have been successful. At the time the claimant resigned, she sincerely believed the employer set her up to fail so they could discharge her but the evidence does support this assertion. The claimant did not give the performance improvement plan an opportunity to let her achieve her revenue goals and be successful.

Based on the facts in this case, the claimant quit her employment for personal reasons. She did not, however establish that she quit for reasons that qualify her to receive benefits. As of December 13, 2009, the claimant is not qualified to receive benefits.

DECISION:

The representative's January 14, 2010 decision (reference 01) is affirmed. The claimant voluntary quit her employment for personal reasons that do not qualify her to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of December 13, 2009. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css