

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETH A REEL
Claimant

APPEAL NO: 13A-UI-02433-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

SERVICEMASTER AVENUE OF THE SAINT
Employer

OC: 01/27/13
Claimant: Respondent (4R)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 22, 2013, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on April 23, 2013. The claimant participated in the hearing. Maureen Harris, Chief Financial Officer, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time office assistant for Servicemaster from August 21, 2012 to January 25, 2013. She voluntarily quit her job by submitting her two week resignation notice on Friday, January 25, 2013. The employer accepted her resignation and decided over the weekend not to allow her to finish her notice period.

The claimant cited three reasons for her voluntary leaving. The first occurred when she was working as a technician the first two to three weeks of her employment and observed some other technicians smoking marijuana on the job site. She reported it to one of the technician managers, who had also received reports from other employees, and the employer held a meeting about the issue and instructed the technicians that behavior would not be tolerated.

The second reason stated by the claimant for leaving was that the employer's daughter, who worked in the office on occasion and supervised the claimant once in a while, abused prescription pain medication. The claimant and the employer's daughter were friends prior to the claimant being hired by the employer and continued to be friends during the claimant's employment. The claimant suffered from chronic migraines and was prescribed pain medication as was the employer's daughter. On one occasion the employer's daughter asked the claimant if she could purchase some of the claimant's pain medication and the claimant believed the

employer's daughter was often high at work although she usually was not in the office as she went out to meet with insurance adjusters and was responsible for the employer's marketing campaign. The claimant told her she would not sell her any of her pain medication and the employer's daughter never asked again. The employer admits her daughter is abusing pain medication and has several medical issues. Additionally, she is often absent from work and thus not around to interfere with other employees. Her family is trying to assist her with those issues but has not been as successful as it would like to date. The claimant never reported the issue to the employer or that she might quit because of the situation.

The third situation that the claimant stated was the final straw in her decision to quit occurred approximately three weeks before she quit her job. A customer came in to pay for her car detailing and provided the claimant with \$400.00 cash as due in her invoice. The claimant gave President/Owner Randy Harris the cash and the invoice which was paid in full. Cand Merta, Office Manager, came in the next day and called the claimant to her office to ask about the petty cash account. The claimant saw the customer's invoice from the day before on her desk and observed that the \$400.00 had been scribbled out and it stated, "\$300.00 per Randy." The claimant and Ms. Merta decided Mr. Harris took the cash. The claimant did not know why he did that but decided it could be tax fraud or illegal in some manner and could come back on her in some fashion and she would "get in trouble with the law." Ms. Merta asked Mr. Harris if he took cash out of the petty cash drawer but never asked why he changed the invoice because he was the owner of the company. The claimant never asked Mr. Harris why he changed the invoice but stated she "expected an answer." That was what caused the claimant to give her two week notice three weeks later.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.6-2.

Obviously employees should not be smoking marijuana on the job site and when the employer learned of that situation it addressed it immediately during a weekly meeting. The incident occurred during the first two weeks of the claimant's employment and does not reach the level of voluntarily leaving for good cause attributable to the employer given that it happened so much earlier than the claimant's resignation and in a completely different area of the company than where the claimant worked for all but two weeks of her employment with Servicemaster. With regard to the employer's daughter being under the influence of prescription drugs, she did have her own prescription for pain medication but was taking more than prescribed and, as the

employer admitted, she does have an abuse problem. The claimant was also on pain medication occasionally at work for her migraines but does not believe her medication impacted her performance. The employer's daughter was rarely in the office and the claimant did not talk to the employer about the issue but instead gossiped with Ms. Merta about the employer's daughter's problems. The employer's daughter also has difficulty expressing herself in a manner that is not offensive due to her tone when trying to make a point but her statements are usually correct as she has a great deal of knowledge about the business.

The last straw for the claimant, however, occurred approximately three weeks prior to the date she submitted her resignation. Company President Randy Harris took \$100.00 from petty cash after a customer came in and paid the claimant \$400.00 in cash and she gave the money and invoice to Mr. Harris. He crossed out the \$400.00 and wrote "\$300.00 per Randy." He took that money as a loan to a shareholder which is not uncommon as the Harris' have made several loans to the company that the business owes the family. The claimant's statement that she thought Mr. Harris was committing tax fraud or doing something illegal or that she could "get in trouble with the law" for his actions are frankly rather absurd. The claimant's job was to answer phones and as the employer testified she "has no clue how (the employer's) accounting system works." The claimant was dissatisfied with the work environment but her complaints about the employer do not rise to the level of unlawful, intolerable or detrimental working conditions as those terms are defined by Iowa law.

871 IAC 24.25(38) 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 section 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 section 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:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

The claimant gave her two week notice to the employer but the employer decided to terminate her employment rather than allowing her to complete her notice period effective February 8, 2013. Under those circumstances, the claimant is eligible for unemployment insurance benefits for the two weeks ending February 9, 2013. Benefits are denied effective the week ending February 16, 2013.

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 section 96.3-7. In this case,

the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The February 22, 2013, reference 01, decision is modified in favor of the employer. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are allowed for the two weeks ending February 9, 2013, for the claimant's resignation notice period, and then withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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