

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA M FODREE
Claimant

APPEAL NO. 16A-UI-10627-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHRISTIAN BOOK & GIFT SHOPPE
Employer

OC: 09/04/16
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated September 20, 2016, reference 01, which held the claimant eligible to receive unemployment insurance benefits finding that the claimant quit work on September 2, 2016 because working conditions were detrimental. After due notice was provided, a telephone conference hearing was held on October 12, 2016 at which time the claimant participated personally. Participating as witnesses for the claimant were Ms. Bonn Gould, Personal Friend/Former Employee, and Pastor John Picker. The employer participated by Ms. Joanna Salvador, Company Owner.

ISSUE:

The issue is whether the evidence in the record establishes that the claimant left her employment with good cause that was attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Patricia Foudree was employed by the captioned church goods store for approximately 20 years before tendering her two-week notice of quitting employment to be effective September 2, 2016.

Ms. Foudree was employed as a part-time sales clerk/cashier and was paid \$9.50 per hour. Her immediate supervisor was her daughter, Lori Boyd, the manager.

Ms. Foudree tendered her two-week notice on or about September 2, 2016 after she arrived for her evening part-time work and noted that the company owner was at the store with an intermittent employee and seemed to be upset. Ms. Salvador, the store owner, nor the claimant initiated any conversation as Ms. Foudree arrived at work. Although the store owner and the intermittent employee that was helping her appeared to be busy decorating in the store, Ms. Foudree perceived that the owner's demeanor was a sign that Ms. Salvador was not in a good mood and that she might be critical in some way.

Ms. Foudree had noted over the many years that she had been employed that the owner had a propensity at times to be critical of employees who were not meeting her business expectations or who had not followed her work directives. Ms. Salvador at times would make comments or give employees directives when customers were present. Ms. Salvador did not use profanity but was direct in her approach to workers. On other occasions the parties worked well together without issues. Ms. Foudree believed that the owner's silence on September 2 was a sign that she was dissatisfied in some way and anticipated that the owner might be critical of some aspect of Ms. Foudree's work. In speaking to the temporary employee, the claimant was informed that Lori Boyd, the claimant's daughter, had quit earlier that day.

Ms. Foudree tendered her two-week notice of quitting using similar paper and language as Ms. Boyd had used but denies that her leaving was tied to her because of her daughter quitting her job as the store manager. No other significant event took place on September 2 or until the claimant submitted her resignation. Ms. Foudress completed her two-week notice period working with Ms. Salvador without incident.

It is the claimant's position that the owner's habit of giving directions or corrections to employees in the presence of customers was inappropriate and demeaning and it caused the store to lose sales. Ms. Foudree maintains that the demeanor that the store owner used and the uncertainty of what the owner's attitude might be each day was very stressful and had caused the claimant "heart palpitations." Ms. Foudree had not been examined by a doctor and had not been advised to leave employment for any medical reasons, however. Ms. Foudree completed the two-week notice period that she had given the employer and the employment came to an end.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes the claimant left this employment with good cause that was attributable to the employer. It does not.

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.

Iowa Admin. Code r. 871-24.25(22) 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:

(22) The claimant left because of a personality conflict with the supervisor.

Iowa Admin. Code r. 871-24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

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. 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. Leaving because of dissatisfaction with the work environment or because of a conflict with a supervisor is not good cause. 871 IAC 24.25(21), (22). Leaving because of unlawful, intolerable or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Services, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993).

In the case at hand, the claimant's resignation and leaving employment was inexplicably tied to the fact that her daughter, the store manager, had quit employment with the Christian Book & Gift Shoppe shortly before Ms. Foudress gave notice of her intent to quit. Nothing else of significance had taken place on September 2, 2016 although the company owner was present but appeared to be upset. Claimant did not speak to Ms. Salvador when she arrived and Ms. Salvador did not initiate a conversation. This was not unusual as it had occurred often in the past and the claimant had not chosen to leave her employment on those occasions. Ms. Foudree was aware that the owner had a propensity for giving employees directions or corrections in their work and that Ms. Salvador would make those statements or comments in the presence of customers. There has been no showing that these statements involved the use of profanity or that they were unusually demeaning to the employee that the comments were made. Statements such as "What are you doing?" . . . "You can do that later" or "These books are out of place" or "You are not working fast enough" may not have been what an employee wanted to hear, but they were not of such a nature as to cause a reasonable person to leave employment with good cause because of them.

The administrative law judge concludes that the claimant's primary reason for leaving her employment effective September 2, 2016 was because her daughter had chosen to leave employment at that time. While this is certainly a good-cause reason from Ms. Foudree's personal point of view, it is not a good-cause reason that is attributable to the employer. Accordingly, the claimant is disqualified for unemployment insurance benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. The administrative record reflects that the claimant has received unemployment insurance benefits in the amount of \$835.00 since filing a claim with an effective date of September 4, 2016 for the week ending dates September 10, 2016 through October 8, 2016. The administrative record does not establish whether the employer participated in the fact-finding interview and made a firsthand witness available for rebuttal.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

DECISION:

The representative's decision dated September 20, 2016, reference 01, is reversed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The issue of the amount of the claimant's overpayment and whether the amount overpaid should be recovered from the claimant or charged to the employer under Iowa Code section 96.3-7b is remanded to the Claims Division for investigation and determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs