IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MELISSA L MEIER
Claimant

ALL IOWA CONTRACTING COMPANY
Employer

APPEAL NO: 07A-UI-04854-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/15/07 R: 03
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Melissa L. Meier (claimant) appealed a representative's May 3, 2007 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from All Iowa Contracting Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 15, 2007. The claimant participated in the hearing, and was represented by Dave Tyler, attorney at law. One other witness, Paul Woodward, was available on behalf of the claimant but did not testify. Gary Boveia, attorney at law, appeared on the employer's behalf and presented testimony from three witnesses, Mike Lien, Michelle Purcell, and Richard Refshauge. During the hearing, Employer's Exhibits A through G and Claimant's Exhibits One through Seven 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:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on August 10, 2005. She worked full time as a contract administrator/specialist in the employer's pavement marking business. Her last day of work was April 6, 2007. She called in an absence on the evening of April 8 for April 9 reporting her children were sick. On the evening of April 9 she called in an absence for April 10 reporting her son was still sick but she planned to be in on April 11. On the morning of April 10 Mr. Lien, the general manager, called the claimant and left her a message at approximately 8:20 a.m. that she should bring in a doctor's note when she came in on April 11 and indicating that he did not want the claimant to call him at home so late in the evenings, but rather that she should call early enough so she could speak to him directly. At approximately 10:05 a.m. on April 10 the claimant came into the office and quit by putting her keys on Mr. Lien's desk and taking her belongings.

The reason the claimant decided to quit on that day was that she was upset that Mr. Lien had requested a doctor's excuse when he knew that one of her children had a chronic health condition and he had not requested a doctor's excuse in the past. The claimant had in the past frequently volunteered a doctor's excuse, so the employer had not believed it was a significant issue to remind the claimant to bring in an excuse. The claimant viewed this as an additional step the employer was taking to seek to force her out of her position. Prior to hiring an accountant, Ms. Purcell, on February 22, 2007, the employer had the claimant cross-trained to cover some of the accounting functions relating to payroll, as the other person who had been in the office handling payroll issues was unreliable in her attendance. When Ms. Purcell was hired, the employer determined that for security reasons it would only have one person, Ms. Purcell, responsible for having access to payroll information. The claimant's job was not in jeopardy; the employer only intended to pull the claimant back to the duties she had been intended to have when hired and before it became necessary to have someone cover for the former less reliable employee. The claimant's pay and other job duties remained the same.

However, the claimant viewed this as diminishing her job. There were certain items of information relating to payroll questions that the claimant needed from time to time in completing her contract information, and so felt she was entitled to have direct access to the payroll system. She discussed this concern with the employer on several occasions, but the employer maintained its position that it only wanted to have Ms. Purcell to have the direct access, and that any payroll information the claimant might need could be supplied by Ms. Purcell before the paperwork was submitted. The claimant did not find this arrangement to be satisfactory as she felt she would be constantly interrupting or interfering with Ms. Purcell's work to get the information she needed and it was less convenient for her. The claimant also felt she was being mistreated as compared to Ms. Purcell in that prior to the Ms. Purcell's hire the claimant had made the bank deposits and had done so without mileage reimbursement, while when Ms. Purcell took over that responsibility, Ms. Purcell was paid mileage.

After her quit, the claimant identified several other concerns she asserts contributed to her decision to quit. She had a dispute regarding the calculation of her vacation pay that she had last discussed with the employer about a year to a year and a half before she quit. The claimant also believed that she had not been given a raise she had been promised in the fall of 2005 even though she was given a raise then and another raise in the spring of 2006; she had not raised that issue with the employer prior to her quitting. She asserted she was concerned that the employer had expended funds for a personal purpose on a modular home that was improperly listed as a business expense; however, the employer demonstrated that the employer did have a business use intended for the modular home, and while there was a slightly incorrect entry of the expense, when the accountant was hired she corrected the entry and was satisfied that there was a bona fide business purpose.

The claimant believed the employer had wrongly maintained the employment of some employees who had lost their driver's licenses because an applicant could not become employed without a valid driver's license. She believed it likely that these employees continued to operate company vehicles after losing their licenses. The employer established that even though it expected persons to have a license at the time of hire, it had the discretion to retain the employment of persons who lost their licenses for a period of time, and that it had taken them off duties which would require the holding of a valid license; the employer had no knowledge of any instance where unlicensed persons illegally operated vehicles in situations requiring a valid license. The claimant also asserted she understood there had been situations on worksites where the employees with the employer's knowledge and even including Mr. Lien, had consumed alcohol. The employer, including Mr. Lien, denied this had occurred.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer.

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 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. There was not a substantial change in the claimant's terms of employment. 871 IAC 24.26(1). Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). Making only one person, who was not the claimant, responsible for having access to the payroll system did not make the claimant's job intolerable; neither did the employer's simple request for a doctor's excuse after a two-day absence. The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973).

Several of the claimant's issues went back a year or more. Even if there were sufficient grounds for discontent at the time, where no concern was voiced for so long the claimant is deemed to have acquiesced. Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa App. 1990). While a claimant does not have to specifically indicate or announce an intention to quit if his concerns are not addressed by the employer, for a reason for a quit to be "attributable to the employer," a claimant faced with working conditions that he considers intolerable, unlawful or unsafe must normally take the reasonable step of notifying the employer about the unacceptable condition in order to give the employer reasonable opportunity to address his concerns. Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005); Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa 1996); Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). If the employer subsequently fails to take effective action to address or resolve the problem it then has made the cause for quitting "attributable to the employer."

Under this logic, if in the alternative the claimant demonstrates that the employer was independently aware of a condition that is clearly intolerable, unlawful, or unsafe, there would be no need for a separate showing of notice by the claimant to the employer; if the employer was

already aware of an obvious problem, it already had the opportunity to address or resolve the situation. Here, particularly for those issues raised by the claimant only after her quit, there was no obvious problem the employer was already on notice that was a concern of the claimant. The claimant did not provide the employer with this notice and opportunity. The claimant has not satisfied her burden. The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's May 3, 2007 decision (reference 02) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of April 10, 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