**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**JAN FEDDERSEN**
Claimant

**STICKLE INGREDIENTS INC**
**KITCHENS & KOFFEE**
Employer

**APPEAL NO. 07A-UI-00367-DT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 11/26/06 R: 03**
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Jan Feddersen (claimant) appealed a representative's January 2, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Stickle Ingredients, Inc./Kitchens & Koffee (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 29, 2007. This appeal was consolidated for hearing with one related appeal, 07A-UI-00368-DT. The claimant participated in the hearing. Linda Stickle appeared on the employer's behalf. 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 October 21, 2003. She worked part time (30 – 36 hours per week) as a clerk in the employer's retail kitchen accessory store and coffee shop. Her last day of work was November 16, 2006. Her normal work schedule was Monday and Wednesday evenings from 3:00 p.m. to 9:00 p.m. and Tuesday, Thursday, and Friday from 9:00 a.m. to 3:00 p.m., and every other weekend.

In late October 2006 the claimant wrote on the bottom of the monthly work schedule that she would not be available to work the Friday after Thanksgiving, November 24. The Friday after Thanksgiving is traditionally a very busy day at the store, with the initiation of the prime holiday shopping season. When the November work schedule was posted the claimant was on the scheduled to work on that Friday; Ms. Stickle had also written on the schedule that no one would be allowed vacation time off from November 24 through December 26. The claimant wrote on the schedule that she would not be there on November 24; Ms. Stickle, the owner,

spoke to the claimant and told her she would see what could be done but there was no guarantee.

On the evening of November 16 the claimant and Ms. Stickle spoke by phone, and Ms. Stickle reemphasized her need to have the claimant work on November 24. This was particularly true as another of the few employees had given the employer notice that she was quitting for new employment, meaning the employer would need to hire and train a new employee, and leaving the claimant as one of the few employees with sufficient experience to handle the Friday after Thanksgiving business. The claimant responded that she would be out of town until Saturday, as she was going to be in Wisconsin, riding with her son to visit other family for Thanksgiving. Ms. Stickle suggested that she would make sure that the claimant would not have to work that day until the 3:00 p.m. to 9:00 p.m. shift so she could leave from her family visit Friday morning and would still have time to get back. The claimant again reiterated that she was not going to return until Saturday.

After making some other suggestions as to how the claimant could arrange to get back on Friday that the claimant rejected, Ms. Stickle stated that if the claimant was not willing to work on a day when the employer really needed her, she did not need the claimant. The call ended immediately thereafter, either with the claimant saying, "Fine," as heard by Ms. Stickle, or by the claimant saying, "What?" Regardless of which word was actually said, the claimant did not recontact Ms. Stickle to verify what Ms. Stickle meant or what her employment status was; rather, she did not report for her scheduled work thereafter, including November 24.

**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 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.

The claimant asserts that her separation was not "voluntary" as she had not desired to end the employment; she argues that it was the employer's insistence that she work on November 24 in order to maintain her employment which led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code §96.6-2; 871 IAC 24.26(21). 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 where an employee declines to work as assigned, including for purposes of a day of vacation, or when the employee fails to return to employment even though not directly told that she was being fired and work was available for the employee had they continued to report for work as directed. 871 IAC 24.25.

The claimant was the party who had the final decision as to whether to agree to work November 24 as directed and to keep her employment, or to proceed with her personal plans for that day; 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. 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). While the impact on the claimant's personal or family life as a result of being expected to work on November 24 was perhaps not ideal, she 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). The claimant has not satisfied her burden. Benefits are denied.

**DECISION:**

The representative's January 2, 2007 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of November 16, 2006, 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.

_____
Lynette A. F. Donner
Administrative Law Judge

_____
Decision Dated and Mailed

ld/kjw