

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICTORIA L MOLLE
Claimant

APPEAL NO: 08A-UI-04519-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DUBUQUE SYMPHONY ORCHESTRA
Employer

OC: 04/13/08 R: 12
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Dubuque Symphony Orchestra (employer) appealed a representative's May 2, 2008 decision (reference 01) that concluded Victoria L. Molle (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 27, 2008. The claimant participated in the hearing. Phil Jensen, attorney at law, appeared on the employer's behalf and presented testimony from two witnesses, Jeff Goldsmith and William Intriligator. During the hearing, Employer's Exhibit One was 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 9, 2002. Since at least 2003 she worked full time as director of operations and orchestra personnel. Her last day of work was March 21, 2008. On March 7 she tendered her resignation. She did not give the employer a specific reason for leaving.

The claimant had been given a performance review on March 6 which gave her an overall rating as exceeding expectations as an employee and achieving expectations as a supervisor. The employer had discussed some issues with the claimant during the review including a concern that the claimant was not putting in sufficient hours in the office. The employer's general office hours were 8:30 a.m. to 5:00 p.m., Monday through Friday, but due to child care issues and a somewhat longer commute to work she had typically been working approximately 9:45 a.m. to 5:00 p.m. She also worked some additional evening and weekend hours particularly during the approximate five concert weeks during the year, as required by the employer's policies.

After discussion on March 6, the issue was left by the employer and signed off by the claimant as that the claimant's "hours in the office would remain the same as long as the child care situation remains as it is . . ." However, a substantial reason the claimant quit was because she believed that the situation would be changed in the future.

A further reason the claimant quit was because of incremental changes in her employment arrangement since her employment began. Prior to late 2005 the claimant had been allowed to keep library work stipends; when Mr. Goldsmith became executive director in late 2005, that amount, about \$900.00 per year, was eliminated, although the claimant received more than that in an alternative salary increase. In about 2003, under the prior executive director, the claimant as well as all staff had lost mileage reimbursement; she had hoped that when Mr. Goldsmith came on in late 2005 this would be restored, but it was not.

In general the claimant was concerned that the attitude of her supervisors was to make her more of an office administrator rather than to have an active community role. That was not an issue raised or discussed by the employer in the March 6 review or otherwise, but was the claimant conclusion given the employer's concern as to whether she was averaging 40 hours per week in the office.

The claimant established a claim for unemployment insurance benefits effective April 13, 2008. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,683.00.

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.

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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). 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. 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). Quitting because a negative comment has been made by a supervisor is not good cause. 871 IAC 24.25(28). 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).

The law presumes a claimant has voluntarily quit with good cause when she quits because of a substantial change in the contract of hire. 871 IAC 24.26(1); Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). A hypothetical possible future change to the claimant's

work arrangement is not a current and substantial change that establishes good cause for quitting. As to the prior incremental changes which took place prior to 2006, those are also not current actual changes in the employment arrangement such as to constitute good cause. Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa App. 1990). The claimant has not satisfied her burden. Benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's May 2, 2008 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of March 21, 2008, 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/pjs