IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JILL A TURNQUIST
Claimant

GENESIS HEALTH SYSTEM
Employer

APPEAL NO. 08A-UI-11047-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/19/08 R: 12
Claimant: Respondent (2-R)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 13, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 10, 2008. Claimant Jill Turnquist participated and presented additional testimony from Cynthia Schmitz. Patty Sallee, Manager of Operations, represented the employer. Exhibit One was received into the record.

ISSUE:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jill Turnquist was employed by Genesis Health System from December 9, 1997 and was a full-time receptionist at the time she voluntarily quit the employment. Effective May 14, 2007, Director of Operations Patty Sallee, R.N., M.S.N., became Ms. Turnquist's immediate supervisor. Ms. Turnquist has been diagnosed with fibromyalgia. Since 2002, Ms. Turnquist had been approved for intermittent leave under the Family and Medical Leave Act (FMLA). Ms. Sallee was aware of Ms. Turnquist's medical diagnosis and aware that Ms. Turnquist was approved for intermittent FMLA leave. At no time did the employer deny Ms. Turnquist's request to be absent in connection with her medical condition and/or her FMLA approval. However, Ms. Sallee did not conceal her frustration with Ms. Turnquist's frequent and sometimes extended absences. Toward the end of August 2008, Ms. Sallee told Ms. Turnquist, "It must be nice to have a week off, Bobette." In making the comment, Ms. Sallee was comparing Ms. Turnquist to another employee, Bobette. Ms. Sallee later apologized to Ms. Turnquist for the comment.

On October 7, 2008, Ms. Turnquist left work early for a medical appointment. Ms. Turnquist had been getting ready to start a two-week vacation on October 13. Ms. Turnquist's return date would have been October 27. Before Ms. Turnquist left on October 7, she collected many of her personal effects from the workplace. Ms. Turnquist took these items with her when she left for her appointment. Ms. Turnquist left only a few personal effects behind. Immediately following the medical appointment, Ms. Turnquist notified Ms. Sallee that her doctor had taken her off

work for the rest of the week. Once Ms. Sallee received word that Ms. Turnquist would be absent for the rest of the week, Ms. Sallee wrote on the weekly work schedule "no more Jill" to indicate that Ms. Turnquist would not be in for the rest of the week.

On October 9, Ms. Turnquist submitted a resignation letter to Ms. Sallee. The letter indicated that Ms. Turnquist's last day in the employment would be October 24, 2008. This date coincided with the last day of Ms. Turnquist's previously approved vacation. Though the resignation letter was dated October 10, 2008, it was delivered on October 9, 2008. At that time Ms. Turnquist delivered the letter to Ms. Sallee, Ms. Turnquist said to Ms. Sallee: "As you have said before, if we're not happy we need to work elsewhere." Ms. Turnquist handed Ms. Sallee the letter, hugged Ms. Sallee, and departed. Ms. Sallee allowed Ms. Turnquist to utilize the approved vacation, which would take up Ms. Turnquist's entire notice period. Upon Ms. Turnquist's resignation from the employment, Ms. Sallee completed appropriate paperwork to submit to the employer's human resources department so that the position could be filled.

Ms. Turnquist quit the employment because she was "too stress out." Included in this were Ms. Sallee's comments about Ms. Turnquist's absences. Ms. Turnquist also quit the employment after she concluded that she would not be able to advance to a better position with the employer. Ms. Turnquist's medical condition did not necessitate that she quit the employment and a medical professional had not advised Ms. Turnquist to quit the employment.

REASONING AND CONCLUSIONS OF LAW:

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 requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Workforce Development rule 871 IAC 24.26(6) provides as follows:

> Separation because of illness, injury, or pregnancy.
>
> a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.
>
> b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made

> it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.
>
> In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work–related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The weight of the evidence in the record fails to establish that Ms. Turnquist's voluntary quit was prompted by her medical condition. The weight of the evidence indicates that Ms. Turnquist was able to perform her duties without risk to her health and without need for accommodations beyond the intermittent FMLA leave. Ms. Turnquist demonstrated this by performing her duties for almost 11 years, including several years after the fibromyalgia diagnosis. The quit was not upon the advice of a medical professional. Ms. Turnquist did not request and did not need additional accommodations.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

The weight of the evidence in the record fails to establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment. Though Ms. Sallee's comment at the end of August was inappropriate, that comment in August did not prompt Ms. Turnquist's quit in October. The evidence fails to establish that Ms. Sallee's notation of "no more Jill" on the weekly work schedule was anything more than an indication to the other employees that Ms. Turnquist would not be available to cover her assigned shifts. The evidence fails to establish that the posting of Ms. Turnquist's position shortly after Ms. Turnquist submitted her resignation indicates anything other than that the employer had a position to fill and that Ms. Sallee took appropriate steps to fill the position that had just come open.

The weight of the evidence indicates that Ms. Turnquist had grown tired of the work environment and had decided to move on for personal reasons. Where a person voluntarily quits due to dissatisfaction with the work environment, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21).

Based on the weight of the evidence and application of the appropriate law, the administrative law judge concludes that Ms. Turnquist voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Turnquist is disqualified for benefits until 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 employer's account shall not be charged for benefits paid to Ms. Turnquist.

Iowa Code section 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representative's November 13, 2008, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until 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 employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/css