

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY S TJADEN
Claimant

APPEAL NO. 10A-UI-10936-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NCS PEARSON INC
Employer

OC: 06/27/10
Claimant: Appellant (4)

Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

STATEMENT OF THE CASE:

Kelly Tjaden filed a timely appeal from the July 23, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on September 20, 2010. Ms. Tjaden participated. On August 30, 2010, the employer submitted a written waiver of its participation in the hearing. Exhibit A was received into evidence. The administrative law judge took official notice of the documents submitted for or generated in connection with the fact-finding interview.

ISSUE:

Whether Ms. Tjaden voluntarily quit the employment NCS Pearson, Inc., for good cause attributable to the employer.

Whether Ms. Tjaden voluntarily quit the employment with NCS Pearson, Inc., for the sole purpose of accepting other employment and performed work for the new employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kelly Tjaden was employed by NCS Pearson, Inc., as a full-time Item Development Associate from 1995 until June 12, 2010, when she voluntarily quit the employment to accept employment with Invest Direct Ltd. Ms. Tjaden suffers from chronic anxiety, first diagnosed in 2005, and is under the care of a physician in connection with that diagnosis. Ms. Tjaden experienced an increase in symptoms toward the end of her employment with NCS Pearson. Ms. Tjaden had undergone a change in psychotropic medication. Ms. Tjaden had been assigned to a new supervisor at work and found the new supervisor to be overbearing and lacking in patience. Ms. Tjaden's doctor did not advise her to leave the employment. Rather, the doctor noted that the situation appeared to be improving toward the end of the employment.

Ms. Tjaden provided NCS Pearson with a written resignation e-mail in which she cited the growth opportunity provided by the new employment as the basis for her decision to leave NCS Pearson. Ms. Tjaden sent the e-mail as a broadcast e-mail. Ms. Tjaden did not reference any negatives about the NCS Pearson employment as factors in her decision to leave the employment for the new employment.

Ms. Tjaden started performing work for the new employer on June 3, 2010 and continued to perform work for the new employer until June 23, 2010, when she realized the “employment” was in fact a fraud scheme and that she had been recruited as a victim and a money laundering mule.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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.

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).

Workforce Development rule 817 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.

When a worker voluntarily quits due to dissatisfaction with the work environment or due to a personality conflict with a supervisor, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21) and (22).

The weight of the evidence in the record establishes that Mr. Tjaden voluntarily quit the employment at NCS Pearson, Inc., for the sole purpose of accepting other employment and performed work for the new "employer." Invest Direct Ltd. perpetrated a rather cunning and elaborate fraud upon Ms. Tjaden. The fact that the new employment and employer turned out to be bogus, would not prevent Ms. Tjaden from being eligible for benefits under Iowa Code section 96.5(1)(a), given the evidence that she did in fact perform work for the new "employer."

The weight of the evidence does not establish a voluntary quit for good cause attributable to NCS Pearson. That company will not be charged for benefits paid to Ms. Tjaden. The weight of the evidence in the record fails to establish a medically-based quit. The evidence fails to establish that the physician recommended that Ms. Tjaden leave the employment or that she had a medical condition that necessitated her separation from the employment. The weight of the evidence also fails to establish intolerable and/or detrimental working conditions at NCS Pearson.

DECISION:

The Agency representative's July 23, 2010, reference 02, decision is modified as follows. The claimant voluntarily quit the employment for the sole purpose of accepting other employment and performed work for the new employer. The claimant is eligible for benefits, provided she is otherwise eligible. The claimant's voluntarily quit from NCS Pearson was without good cause attributable to that company. NCS Pearson will not be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs