

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACIE N SCHOMER
Claimant

APPEAL NO: 14A-UI-10315-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TJ SIG CORPORATION
Employer

OC: 09/07/14

Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

TJ Sig Corporation (employer) appealed a representative's September 26, 2014 decision (reference 01) that concluded Tracie N. Schomer (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 October 22, 2014. The claimant participated in the hearing and presented testimony from one other witness, Robert Swanson. Tracy Bruce 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:

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

OUTCOME:

Reversed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer in about September 2010. She worked full time as a manager in at least two of the employer's Quad Cities sandwich shops. Her last day of work was August 24, 2014. She voluntarily quit on that date.

The claimant had initially worked at the employer's Port Byron, Illinois location, but had been working at the Davenport, Iowa locations for about two years. The business owner, Bruce, had been concerned about the performance of the Davenport location, and so effective August 20 had transferred the claimant back to the Port Byron location. The claimant was not so much concerned about being transferred back to the Port Byron location as she was about the fact that she felt Bruce was overly critical of her and never gave her any positive feedback. The two had had a conversation on or about August 21, right after the claimant transferred back to Port Byron, in which the claimant inquired about getting a raise; the claimant was upset by Bruce's response, which was that she "did not merit" a raise.

On or about August 23 the claimant learned that Bruce had made a comment to a frequent customer at the Davenport shop, Swanson, that the claimant felt that she was worth more than she was getting, and that she was not good for the Davenport location, although she was fine for the Port Byron location. The claimant was also concerned that Bruce was having the claimant train an assistant in the management roles, even though this was customary to have back up trained. As a result of her concerns about how the employer felt about her, the claimant decided to quit. The employer had not taken any steps to discharge the claimant, and her job had remained available to her had she not quit.

The claimant established a claim for unemployment insurance benefits effective September 7, 2014. The claimant has received unemployment insurance benefits after the separation. The question of the employer's participation in the September 25, 2014 fact-finding interview is not clear.

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. Quitting because of a dissatisfaction with the wage paid, where the claimant had previously known and accepted the wage is not good cause. Rule 871 IAC 24.25(13). Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. Rule 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. Rule 871 IAC 24.25(21), (22). Quitting because a reprimand has been given is not good cause. Rule 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 claimant has not satisfied her burden. Benefits are denied.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the

claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Benefits Bureau, specifically to include a determination on whether the Benefits Bureau considers the employer to have met the criteria for participation.

DECISION:

The representative's September 26, 2014 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of August 24, 2014, 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.

The matter is **REMANDED** to the Benefits Bureau for investigation and determination of the overpayment, participation, and chargeability issues.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs