IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 04A-UI-10577-RT
OC: 10-26-03 R: 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Pearl M. Greene, filed a timely appeal from an unemployment insurance decision dated September 30, 2004 reference 05, amending reference 03, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on October 20, 2004, with the claimant participating. Ryan Ball, Center Manager, participated in the hearing for the employer, APAC Customer Services of Iowa LLC. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time telephone sales representative working 30 hours per week, from June 3, 1997 until she voluntarily quit on August 31, 2004. Beginning in February 2004 the claimant requested a reduction in wages so it would not reduce or interfere with her social security benefits. The employer complied and allowed the claimant reduced hours. However, the employer could no longer offer the claimant reduced hours and in July told the claimant that she would have to go back to the 30 hours that she had worked throughout her employment prior to February 2004. The claimant did not want to do that because it would interfere with her social security. The employer gave the claimant three options: work the 30 hours as she always had; or work 22 hours Monday, Tuesday, and Wednesday, from 1:00 p.m. to 8:30 p.m.; or work 22 hours Monday through Friday, from 1:00 p.m. to 5:30 p.m. The claimant chose to work 22 hours three days a week, Monday, Tuesday, and Wednesday, from 1:00 p.m. to 8:30 p.m. The claimant worked those hours for approximately a month and a half and then voluntary quit because she did not like the working conditions on the night shift. She worked with young people and claimed that the work was too loud. The claimant did express concerns to the employer both when she was told that she would have to go back to 30 hours on the dayshift and complained about the conditions on the nightshift but never, at anytime, threatened or announced an intention to quit if any of her concerns were not addressed. The claimant filed for unemployment insurance benefits effective October 26, 2003 and received benefits for benefit week ending November 1, 2003 in the amount of $137.00 (earning $70.00). The claimant then reopened her claim for benefits effective January 25, 2004 and received the following benefits: Zero benefits for benefit week ending January 31, 2004 (earnings $195.00); $37.00 for benefit week ending February 7, 2004 (earnings $170.00); $166.00 for benefit week ending March 6, 2004 (earnings $38.00); $70.00 for benefit week ending March 13, 2004 ($137.00 earnings); $102.00 for benefit week ending April 10, 2004 (earnings $105.00); and $116.00 for benefit week ending April 17, 2004 (earnings $91.00). For benefit week ending April 24, 2004, the claimant filed a weekly claim but received no benefits showing earnings sufficient to cancel benefits. The claimant also filed weekly claims for benefit weeks ending May 1, 8, 15, and 22, 2004, but is shown as being disqualified to receive such benefits because she was not able and available for work. The claimant then reopened her claim effective September 12, 2004, but has received no benefits. The records show that for benefit week ending September 18, 2004, she was not able and available for work and thereafter, she is disqualified as a voluntary quit. The records also indicate that the claimant is overpaid $218.00 for the benefits she received for benefit weeks ending April 10 and 17, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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.

871 IAC 24.25(13), (18) (21), (27), (30) provide:

> Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
>
> (13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.
>
> (18) The claimant left because of a dislike of the shift worked.
>
> (21) The claimant left because of dissatisfaction with the work environment.
>
> (27) The claimant left rather than perform the assigned work as instructed.
>
> (30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

The parties concede that the claimant left her employment voluntarily. The issue then becomes whether the claimant left her employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant first testified that she left her employment because she was required to work 30 hours on the dayshift and this interfered with her social security. However, the claimant had been working 30 hours during the dayshift throughout her employment until February 2004 when, at her request, the employer reduced her hours to three days a week instead of four days a week. The employer wanted the claimant to go back to four days a week during the dayshift and the claimant refused because it would interfere with her social security. Leaving work voluntarily because of a dissatisfaction with the hours but knowing the hours when hired is similar to leaving work because of wages and is not good cause attributable to the employer. Further, and more compellingly, leaving work voluntarily to keep from earning enough wages during the year to adversely affect her receipt of federal old age benefits (social security) is not good cause attributable to the employer. See 871 IAC 24.25(31). Later, the evidence established that the claimant actually accepted an option offered by the employer to work from 1:00 p.m. to 8:30 p.m. Monday, Tuesday, and Wednesday for 22 hours and worked that shift for a month and a half because the claimant believed that it was too loud and she had to work with younger people. It appears that the claimant really accepted the new shift but then decided to quit because she did not like the shift. However, leaving work voluntarily because of a dislike of the shift worked is not good cause attributable to the employer. The administrative law judge specifically notes that the claimant worked that shift for a month and a half. Also, leaving work voluntarily because of a dissatisfaction with the work environment or leaving work rather than performing the assigned work as instructed are not good cause attributable to the employer.

The evidence also establishes that the claimant was given another option to work from 1:00 p.m. to 5:30 p.m. five days a week, but the claimant chose not to do that because it would involve too much commuting, but leaving work voluntarily due to the commuting distance when she was aware of the commuting distance is also not good cause attributable to the employer. The claimant has not demonstrated by a preponderance of the evidence that her working conditions on the nightshift were unsafe, unlawful, intolerable or detrimental. She merely said that it was too loud and she worked with young people. The bottom line was the claimant did not like that shift and quit, but there is not a preponderance of the evidence that her working shift was unsafe, unlawful, intolerable or detrimental to the claimant. The administrative law judge also concludes that there is not a preponderance of the evidence under these circumstances that the claimant left her employment voluntarily because of a willful breach of the claimant's contract of hire by the employer. The evidence establishes that throughout almost seven years, the claimant worked 30 hours per week and then in February she requested that her hours be reduced, and the employer accommodated that request, but the administrative law judge does not believe that because this came at the claimant's request and was only for a short time and was only to accommodate the claimant, that this was a change in her contract of hire. When the employer attempted to move the claimant back to the hours under which she had originally been hired, the claimant chose another shift or quit. Finally, although the claimant did express concerns about these matters, the claimant never indicated or announced an intention to quit if her concerns were not addressed and, therefore, really did not give the employer a reasonable opportunity to address the claimant's concerns prior to her quit. The claimant's testimony to the contrary is not credible. The claimant was adamant that she had filed for no unemployment insurance benefits and received no unemployment insurance benefits before filing her claim (reopening her claim) effective September 12, 2004. However, Iowa Workforce Development records clearly indicate that the claimant did receive unemployment insurance benefits sporadically at least from benefit week ending November 1, 2003 to benefit week ending April 17, 2004, although she is now shown as overpaid some of those benefits. Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

There was evidence at the hearing that the claimant may not be able, available, and earnestly and actively seeking work inasmuch as she is placing restrictions on her availability for work. The administrative law judge notes that there is already a decision by an administrative law judge dated June 9, 2004, reference 01, determining that the claimant is not eligible to receive unemployment insurance benefits because she is limiting the number of hours she works and is therefore not able and available for work. The administrative law judge believes that this decision is still in place and still applicable to the claimant. In any event, because the administrative law judge herein above disqualified the claimant from unemployment insurance benefits because of a voluntary quit without good cause attributable to the employer, the administrative law judge does not believe that it is now necessary to remand this matter for reconsideration as to whether she is able, available, and earnestly and actively seeking work or whether the previous decision remains in place. However, should the claimant not be disqualified to receive unemployment insurance benefits, this matter should be remanded for an investigation and determination as to whether the previous decision remains in place and, if not, whether the claimant is able, available, and earnestly and actively seeking work.

DECISION:

The representative's decision dated September 30, 2004, reference 05, amending reference 03, is affirmed. The claimant, Pearl M. Greene, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer.

b/kjf