

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA A LESNET
Claimant

APPEAL NO: 08A-UI-05049-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALPLA INC
Employer

**OC: 04/27/08 R: 03
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Melissa A. Lesnet (claimant) appealed a representative's May 21, 2008 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Alpla, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 10, 2008. The claimant participated in the hearing. Kay Cramer 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 2, 2007. She worked full time as a packaging operator on the second shift, 6:00 p.m. to 6:30 a.m., on a rotating two days on, two days off, three days on, three days off schedule in the employer's plastic bottle manufacturing business. Her last day of work was the shift that ended on the morning of May 2, 2008.

On the morning of May 2 at approximately 1:00 a.m. the claimant had some concerns regarding the quality of some of the bottles that she had packaged. She alerted the quality assurance person, who did not appear to be overly troubled by the claimant's concerns. The claimant then removed her sign-off from the pallets of bottles as she did not wish defective bottles to be sent out with her approval until she found out what the situation was with the bottles. Her supervisor learned of the situation and directed the claimant to replace her sign-of onto the packages, and the claimant refused. After further argument, the supervisor told the claimant to leave, stating that she was "nothing but trouble." The supervisor indicated that the claimant was suspended "indefinitely."

The employer intended the claimant's being sent home to be a one-day suspension and expected her back for her next scheduled shifts on May 5 and May 6. However, the claimant did not call or report for work as she believed she had been effectively discharged. On May 7 the claimant spoke with Ms. Cramer, the human resources representative, who indicated to the claimant that she had not been discharged, but only suspended. The claimant believed Ms. Cramer was going to check with the supervisor to confirm this and get back with the claimant; when the claimant did not hear further from Ms. Cramer, she maintained her belief that she had been discharged. On May 13 the claimant came in to bring in her uniform and again spoke to Ms. Cramer. She was again told that she had not been discharged. However, the claimant indicated that she was not going to be returning to the employer as she felt harassed.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. . Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that her separation was not “voluntary” as she had not desired to end the employment; she argues that it was the employer's supervisor's imposition of an “indefinite suspension” which led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). 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. The rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as not returning to assigned work when work is made available and the claimant has not been told she has been discharged. 871 IAC 24.25.

While there was some room for ambiguity immediately after the suspension was imposed, Ms. Cramer removed any such ambiguity when she assured the claimant that her job remained available to her. It was the claimant's choice not to return to her position; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a current 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 reprimand has been given is not good cause. 871 IAC 24.25(28). While the claimant's work situation was perhaps not ideal, she 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.

DECISION:

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