IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KAREN A EASON
Claimant

BROADLAWNS MEDICAL CENTER
Employer

APPEAL NO: 06A-UI-08739-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/02/06 R: 02
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Karen A. Eason (claimant) appealed a representative's August 29, 2006 decision (reference 03) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Broadlawns Medical Center (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was convened on September 18, 2006 and reconvened and concluded on September 29, 2006. The claimant participated in the hearing and was represented by John Martin, attorney at law. Richard Barrett appeared on the employer's behalf and presented testimony from four witnesses, Jim Fox, Mary Fuller, Annett Doman, and Sheila Barrett. During the hearing, Claimant's Exhibit A was entered into evidence. 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 May 1, 2006. She worked full time as a residential treatment worker in the employer's group home providing services to adults with chronic mental illness on a Monday through Friday, 7:00 a.m. to 3:00 p.m., and every other weekend. Her last day of work was August 2, 2006. She did report for a meeting on August 4 with Mr. Fox, group home director, but did not return to work thereafter.

On August 2 the claimant had been on an outing with some of the residents in the morning. When she returned, she observed that one of the other workers was on her phone on a personal call and that two of the other workers were in the back office. The claimant began to have concerns that there was no one else paying attention to the residents except herself, and should there be a problem with any of the residents there would not be anyone there to assist her. There was no evidence presented that any of the residents had posed any problem that

day or any other day since she began working at the home. She called Mr. Fox, the group home director, at approximately 11:20 a.m. and complained that the one worker had been on the phone on personal calls "all morning." Mr. Fox indicated the claimant could either address the issue directly with the other worker or he would come over and talk to the worker. The claimant responded that she would talk to the worker.

The claimant did broach the issue with the coworker. However, she continued to feel stressed because one of the workers who had been in the back office had indicated that she was going to be leaving soon due to a sick child. The claimant then called Mr. Fox back at about 11:30 a.m. and stated that she was feeling too much stress, that she needed to go home then. Mr. Fox asked her to stay put until he got over to the home. When he got to the home, asked her what the problem was. The claimant continued to feel too stressed to talk to him, so he agreed to let her go home at that time, but indicated they needed to talk about the situation before the claimant returned to work. The claimant left at about 11:45 a.m.

An arrangement was made for the claimant to come in and talk on August 4 at about 10:00 a.m. When she arrived, Ms. Fuller, a nurse and assistant supervisor, was also present. The claimant expressed concerns regarding being able to depend on her coworkers to "watch her back." The state required ration for staff to residents for this type of group home is 1:15; there were 16 residents in the home, and usually at least four workers on duty at the home, plus the two supervisors a block away. The claimant inquired about whether there might be a part-time position available. Mr. Fox responded that there had been, but it was no longer available. The claimant asked if she gave a two-week notice if she would get a good reference. Mr. Fox responded by asking if the claimant was giving a two-week notice. The claimant replied that she could not work there anymore. She then left the group home.

From the group home the claimant went to the main hospital and spoke to Ms. Doman, the director of human resources. She asked Ms. Doman if there was a part-time position available in the group home, and Ms. Doman confirmed that there was not. The claimant then asked if there was a part-time position available elsewhere in the hospital system, and Ms. Doman responded that the claimant would have to check the bulletin board postings. Ms. Doman asked the claimant if she had quit her position at the group home or if she had been fired, and the claimant responded that she felt it was a mutual agreement to end the employment. The claimant then proceeded to describe to Ms. Doman complaints regarding working at the group home, which the claimant asserted made the group home a hostile workplace.

The claimant described that at one of the twice-daily staffing meetings on or about August 1 there were a number of comments made of an offensive sexual nature, and that this was a repeated occurrence. She asserted that there was discussion among some of the workers regarding a dog they referred to as a "crotch-smelling" dog. She claimed that Mr. Fox had begun making a "humming noise" and that a worker responded, "oh, we're talking about the vibrator" to which Mr. Fox laughed, and another worker commented in reference to a resident, "she doesn't need a vibrator – she uses her fingers." She also reported that Ms. Fuller had made comments about "thong underwear." She complained that neither Mr. Fox nor Ms. Fuller, the two supervisors, said or did anything to stop the conversation, and that in fact they participated.

The claimant had not broached this subject in any discussions with Mr. Fox or Ms. Fuller. Ms. Doman told the claimant that she would investigate the complaint. When the claimant left Ms. Doman's office, she was unsure of her employment status, but felt that if the complaint were addressed to her satisfaction, she might return to her position. However, she did not contact

Ms. Doman to learn of the outcome of the investigation or seek to return to her position at any time after August 4.

Ms. Doman assigned the investigation to Ms. Barrett, the employer's benefit coordinator. She interviewed all of the workers identified by the claimant as well as both Mr. Fox and Ms. Fuller. She completed her investigation on or about August 14. She found no employee who recalled any discussion about a "crotch-smelling dog" or hearing Mr. Fox making a "humming noise" in conjunction with discussion of a vibrator. Some employees recalled Ms. Fuller having talked about being in a store where she saw someone bent over so she could see the person's thong underwear, and asking what would other people have said or done in that situation. Mr. Fox and Ms. Fuller also testified that they were unaware of any of these occurrences and denied any involvement other than Ms. Fuller acknowledging she had talked about seeing someone in the store with thong underwear.

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 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.

The claimant asserts that her separation was not "voluntary" as she had not subjectively desired to end the employment and never used the words that she "quit"; she argues that it was the employer's action or inaction 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 a voluntary quit of the employment, such as leaving work rather than performing assigned duties and leaving when work was available and the person had not been told she was discharged.

871 IAC 24.25(27), (33) provides:

> 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 § 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 § 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:

(27) The claimant left rather than perform the assigned work as instructed.

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

It was the claimant's choice to leave the workplace and not return; 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 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 coworker or supervisor is not good cause. 871 IAC 24.25(6), (21), (23). 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). Notably, the complaints raised by the claimant with Mr. Fox and Ms. Fuller did not even allude to the issues the claimant raised with Ms. Doman, and the complaints she raised with Ms. Doman did not even allude to the issues the claimant raised with Mr. Fox and Ms. Fuller. The employer has provided evidence of first hand witnesses and the second hand inquiry by Ms. Barrett to rebut the claimant's allegations; the claimant has not offered any evidence to corroborate her allegations. The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's August 29, 2006 decision (reference 03) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of August 4, 2006, 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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs