IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KATHY KIRKLIN
Claimant

VARSITY CONTRACTORS INC
Employer

APPEAL NO: 10A-UI-16845-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10-03-10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 30, 2010, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on January 28, 2011. The claimant participated in the hearing. Geri Miles, Contract Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time lead food court housekeeper for Varsity Contractors from June 1, 2010 to August 28, 2010. Prior to August 2010, the claimant worked from 7:00 a.m. to 3:30 p.m.; Chris came in and worked from 10:30 a.m. to 5:00 or 6:00 p.m.; Carla worked from noon to 8:30 p.m. and Roger worked from 1:00 p.m. to 9:30 p.m. Carla experienced a lung problem the first Saturday in August 2010 and did not return until about two weeks after the claimant left her position. She quit because she was one person short during the lunch rush for four Saturdays in a row beginning August 7, 2010. She called the head housekeeper on the radio for help each of the last four Saturdays but did not receive any help. She was frustrated and overwhelmed but had not received any warnings about her work performance. While she did speak to the head housekeeper about needing help she never contacted Geri Miles, Contract Manager, to tell her what was happening or that the work conditions were so intolerable to her that she felt she had to quit. She did ask Ms. Miles to hire someone to replace Carla but Ms. Miles did not feel that would be cost effective because Carla was returning and it would be difficult to find an employee who would only want to work for a few weeks. Ms. Miles testified that if she had been made aware of the claimant's situation she definitely would have insured the claimant had the help she needed, especially during the busiest time of the day which Ms. Miles estimates was about 12:30 p.m., by sending maintenance employees to help.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. Generally notice of an intent to quit is required by Cobb v. Employment Appeal Board, 506 N.W.2d 445, 447-78 (Iowa 1993), Suluki v. Employment Appeal Board, 503 N.W.2d 402, 405 (Iowa 1993), and Swanson v. Employment Appeal Board, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871 IAC 24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871 IAC 24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871 IAC 24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. Hy-Vee, Inc. v. Employment Appeal Bd., 710 N.W.2d 1 (Iowa 2005). In this case it important to distinguish whether the working conditions were truly intolerable or whether the working conditions were dissatisfactory. After listening to the claimant's testimony, the administrative law judge concludes the claimant voluntarily left because working conditions were dissatisfactory with the absence of Carla for a period of several weeks. While the claimant was clearly frustrated and overwhelmed while working shorthanded on Saturdays in August 2010, Carla was scheduled to return shortly, and she never approached Ms. Miles for help. Ms. Miles was the one person who could have made sure she had enough help during the Saturday lunch rushes in the food court but the claimant failed to discuss the matter with her and consequently Ms. Miles was unaware of the situation. Even with Carla away for at least the month of August 2010, this does not rise to the level of intolerable working conditions as it was a temporary situation which occurred once a week and one that could have been resolved with Ms. Miles assistance. Therefore, benefits are denied.

DECISION:

The November 30, 2010, reference 01, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she 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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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

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