

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

Appeal Number: 15IWDUI187
OC: 4/19/15
Claimant: Respondent (2)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

CARRIE HUBERT
P.O. BOX 30
SLOAN, IA 51055

CREATIVE SPIRITS INC.
13265 253RD AVENUE
SPIRIT LAKE, IA 51360

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FOR CLAIMANT

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 the Department. 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)

August 6, 2015

(Dated and Mailed)

STATEMENT OF THE CASE

Claimant Carrie Hubert (employee) filed a timely appeal from a representative's decision issued by Iowa Workforce Development (the Department) dated May 5, 2015 (reference 01). In this decision, the Department determined that Hubert was not eligible to receive unemployment insurance benefits. The decision states that Hubert quit her employment without good cause attributable to her employer, Creative Spirits Inc.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on June 16, 2015. On July 17, 2015, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Claimant Carrie Hubert was represented by attorney Rosanne Lienhard. Hubert presented testimony. Employer Creative Spirits Inc. was represented by Barb Clayton, its president and owner, who presented testimony. The employer submitted Exhibits 1 through 13, which were admitted as evidence.

ISSUES

Whether the claimant left work voluntarily without good cause.

FINDINGS OF FACT

Carrie Hubert was employed as a studio manager for Creative Spirits Inc. at its Sioux City, Iowa location. In April 2015, Hubert was experiencing some frustrations with her job, including the way she was being treated by another manager and feeling like she needed some assistance so she could have a day off occasionally. Additionally, Hubert had some concerns regarding the standards to which her studio was held, as compared with studios in different locations. (Hubert testimony).

On April 15, 2015, Hubert wrote an e-mail to Barb Clayton, president and owner of Creative Spirits Inc. In the e-mail, Hubert expressed concerns regarding a number of issues, including: 1) her perception that she was required to be available for the employer 24 hours a day, seven days a week; 2) the last-minute scheduling of out-of-town meetings; 3) the standards to which studios in different locations with different populations were held; and 4) the lack of assistance for Hubert at the Sioux City location. The e-mail included the following language:

I feel like I want to address some concerns and frustrations with you before the meeting next week. I do want to say how much I have enjoyed working for Creative Spirits this past year. It has been a fun and exciting ride. However, lately I have lost the joy in this job due to various reasons.

...

I addressed my concerns. I can no longer put my needs and feelings on the back burner. I have been stressed and not feeling well, so I will be putting myself first.

(Exh. 1).

The e-mail did not expressly state that Hubert intended to resign her position and Hubert did not intend for the e-mail to communicate a resignation. The day after Hubert sent the e-mail, Clayton called her and told her she had received the e-mail and the employer planned to address her concerns.

Hubert was scheduled to work the next few days in the studio and she did so. On April 22, Clayton and Sue Boettcher traveled to Sioux City to meet with Hubert. At the meeting, after some initial small talk, Clayton pulled out Hubert's e-mail and stated that she was accepting her resignation. This caught Hubert by surprise and she told Clayton that she was not resigning. Hubert asked Clayton if she was being fired, to which Clayton replied, "No, you resigned." Hubert again stated that she had not resigned; after going back and forth a few times, Clayton stated, "I'm not going to bicker with you" and changed the subject. At no point during this conversation did Hubert express that she wanted to resign.

Despite Hubert stating that she did not wish to resign, Clayton had already made the decision to accept Hubert's resignation and wanted to move forward. During the April 22 meeting, Clayton requested that Hubert turn over her keys to the studio, the money bag, and other items related to her employment. Hubert did so.

REASONING AND CONCLUSIONS OF LAW

Iowa Code section 96.5 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 central dispute in this case relates to whether Hubert voluntarily resigned her employment with Creative Spirits Inc. Hubert asserts that she did not resign in her letter and, when she became aware her employer interpreted the letter as a resignation, she immediately clarified that she was not resigning her employment. The employer asserts that Hubert's letter was a resignation and she had simply had second thoughts by the time of the meeting on April 22.

A voluntary quit requires an intention to terminate the employment relationship accompanied by an overt act carrying out the intent.¹ The evidence presented at hearing does not support the conclusion that Hubert voluntarily resigned her employment with her employer. Hubert did not have the requisite intent to resign, nor did she engage in any overt act carrying out an intent to resign. While the employer relied heavily upon the April 15 letter that Hubert sent, nowhere in the letter does Hubert state that she intends to resign or is resigning, nor does she give any effective date for a resignation. After sending the letter airing her concerns regarding her employment situation, Hubert continued to report for work as she was scheduled to do. Clayton acknowledges that when she told Hubert during the April 22 meeting that she was accepting her resignation, Hubert immediately clarified that she did not intend the letter to serve as a resignation and she was not resigning.

¹ *Peck v. Employment Appeal Board*, 492 N.W.2d 438, 440 (Iowa App. 1992) (citing *Local Lodge No. 1427, International Ass'n of Machinists & Aerospace Workers v. Wilson Trailer Co.*, 289 N.W.2d 608, 612 (Iowa 1980)).

While the employer presented evidence at hearing that Hubert and her husband were in the beginning stages of opening a business in Sioux City that would engage a similar market as Creative Spirits Inc., I found Hubert's testimony credible that her husband, who did not have full-time employment during the relevant time period, was going to be the primary operator of this business and she would participate only approximately 10 hours per week, secondary to her work at Creative Spirits Inc. The fact that Hubert was involved with starting up a new business does not change the fact that she did not have the requisite intent to resign from her employment with her employer, nor did she carry out any overt act in furtherance of that intent.

There is no allegation by the employer in this instance that Hubert was terminated for a reason that would disqualify her from receiving unemployment insurance benefits. The employer misconstrued Hubert's letter and believed she had resigned. The employer was incorrect in its conclusion.

DECISION

Iowa Workforce Development's decision dated May 5, 2015 (reference 01), is **REVERSED**. The claimant is eligible to receive unemployment insurance benefits. The claimant did not voluntarily quit her employment with her employer.

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