

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARYN A PUGH
Claimant

APPEAL NO. 10A-UI-09482-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KNOWLEDGE LEARNING CORP
Employer

OC: 11/08/09
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Knowledge Learning Corporation (KLC), filed an appeal from a decision dated June 23, 2010, reference 04. The decision allowed benefits to the claimant, Karyn Pugh. After due notice was issued, a hearing was held by telephone conference call on August 20, 2010. The claimant participated on her own behalf. The employer participated by Director Linda Doty and Assistant Director Marcia Mortz.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Karyn Pugh was employed by KLC from February 2, 2010 until May 17, 2010 as a full-time cook. On Friday, May 14, 2010, Director Linda Doty gave the claimant a copy of her job description and asked her review it over the weekend. Ms. Pugh was encouraged to come to the director if she had any questions.

On Monday, May 17, 2010, the claimant met with Ms. Doty and Assistant Director Marcia Mortz. She said she could not perform the job duties as set out in the job description. The employer asked her if she wanted to take a job in one of the classrooms, but she declined and said she would have to quit. Ms. Doty asked her to wait two weeks to see if things could not be worked out regarding her job duties, but she declined that offer as well. The employer asked her to submit a written resignation, which she did.

Karyn Pugh has received unemployment benefits since filing an additional claim with an effective date of May 16, 2010.

REASONING AND CONCLUSIONS OF LAW:

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(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 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:

(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.

The claimant acknowledged she resigned because she did not feel she could do the job as set out in the job description. She also acknowledged the employer did not give her the choice between resigning and being discharged and she was not going to be "forced" to take another job within the company. She claimed she quit "under duress" but could not provide any evidence of any threats being levied against her by the employer if she failed to resign.

Ms. Pugh felt she could not do the job as described, but no disciplinary action had ever been issued against her for her job performance. Continuing work was still available to her had she not resigned. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits

were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of June 23, 2010, reference 04, is reversed. Karyn Pugh is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw