

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DORIS C LIES
Claimant

APPEAL NO. 09A-UI-11879-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

METOKOTE CORPORATION
Employer

**Original Claim: 06/14/09
Claimant: Respondent (2/R)**

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Metokote Corporation (employer) appealed a representative's August 7, 2009 decision (reference 01) that concluded Doris C. Lies (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 2, 2009. The claimant participated in the hearing. Pam Wright appeared on the employer's behalf and presented testimony from one other witness, Andy Rickert. 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 December 7, 2000. She worked full-time as an administrative assistant/accounting coordinator in the employer's Cedar Falls, Iowa, specialty coating plant. Her last day of work was May 29, 2009.

The claimant had been discussing the possibilities of retirement since 2008. In January 2009 she had discussions with an acquaintance in the plant who was a manager of another area as to cutbacks and layoffs that could be occurring. She was aware that in some other plants, her position did not exist but the duties were combined into other positions. She decided that it would be better for her to retire than be laid off. She was never told by any of her managers that her position in fact was slated for elimination or layoff before late January, when she announced to her manager, Mr. Rickert, that she was going to be retiring sometime during 2009. After she announced this to him, he did discuss with her that her duties would be handled by a front desk person, and there was general discussion about providing training to that person prior to the actual retirement.

No specific date was set for the retirement until sometime in April; at that time, for purposes of training planning, the employer inquired of the claimant if she had decided what her last day would be. She responded that her retirement would be the end of May; the last regular work day in May was May 29. The employer did not require the claimant to retire by that time, and in fact had desired the claimant to stay on at least part time past May 29, but the claimant declined, as she felt it best to make a clean break.

The claimant established a claim for unemployment insurance benefits effective June 14, 2009. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

Terminations of employment are generally classifiable as layoffs, quits, or discharges; a “layoff” is “a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.” 871 IAC 24.1(113)a. A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action that directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action that 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 the employer was going to eliminate her position and that she retired rather than be laid off. 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. Quitting due to a belief that there was going to be a layoff when no layoff had in fact been announced or scheduled and when continued work is available is a voluntary quit rather than a layoff. 871 IAC 24.25(29), (40).

It is clear that the claimant, not the employer, dictated when and how her employment was ending. The claimant did choose to end the employment rather than choose to continue working; 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. Quitting in order to accept retirement when she could have continued working is not good cause. 871 IAC 24.25(24). The claimant has not satisfied her burden. Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant’s employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the

claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's August 7, 2009 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of May 29, 2009, 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. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue and whether the claimant is eligible for a waiver of any overpayment.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw