IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CONNIE S GILLESPIE
Claimant

IRON MOUNTAIN INFORMATION MANAGEMENT INC
Employer

APPEAL NO. 08A-UI-00033-S2

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/25/07 R: 02
Claimant: Respondent (2)

Section 96.5-1 - Voluntary Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Iron Mountain Information Management (employer) appealed a representative's December 21, 2008 decision (reference 02) that concluded Connie Gillespie (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held in Des Moines, Iowa, on March 28, 2008. The claimant was represented by Richard Book, Attorney at Law, and participated personally. The employer was represented by David Williams, Appellant Assistant Manager, and participated by Lowell Roode, General Manager; Diane Aschoff, Customer Service Supervisor; Gina Frank, Imaging Operation Supervisor; David Frank, Consultant; and Erica Zimich, Senior Human Resources Generalist. The claimant offered and Exhibits A through J were received into evidence. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on September 1, 2006, as a full-time operations supervisor. The employer purchased the company from the claimant's prior employer. She had been working in the same capacity since June 3, 2002. The employer operated under policies that the pervious owner laid out. The claimant received a handbook and later a Benefit Brief regarding Tuition Reimbursement. The previous owners also continued to work for the employer. Mr. Frank became a Consultant and Mrs. Frank became an Imaging Operation Supervisor.

The company encouraged its employees to take job-related courses and provided reimbursement to eligible employees for those classes. The claimant was eligible and began her pursuit of a four-year degree at American Institute of Business. Her job title required at least

an associate's degree and she did not have one. The employer approved all classes for her first semester of study.

Meanwhile, the claimant and the Imaging Operation Supervisor, a co-worker, had a different opinion about their job duties. Sometimes the claimant needed her co-worker's help. Sometimes the co-worker needed the claimant's help. Each had their own reasons for refusing to help the other. On November 20, 2007, the claimant met with the General Manager and the Senior Human Resources Generalist to discuss, among other things, the claimant's continuing problems with her co-worker.

The General Manager reprimanded the claimant after the meeting. There are other employees within the company but outside the claimant's department who were discussing various issues with the claimant. Her job as a supervisor was to bring those concerns to either the Human Resources Department or a member of upper management. She failed to do that and, instead, counseled the employee herself as if the employee were in her department. She was warned that she was in violation of her role as a supervisor for failure to bring that information to upper management.

Three times on November 21, 2007, the claimant noticed that the General Manager and she were standing in the same room and he was grinning. The claimant felt threatened by the General Manager even though he thought he was not doing anything out of the ordinary. The claimant did not tell the General Manager or anyone else that he was causing her to feel uncomfortable.

Also on November 21, 2007, the employer notified the claimant that it would not pay for one of the claimant's two classes she would be taking starting November 26, 2007. The Senior Human Resources Generalist told the claimant the Marketing Principals class was not job-related even though it was a required class for Business Administration and Leadership degree. A copy of the policy accompanied the denial of coverage. The Senior Human Resources Generalist was the person in the company assigned to deal with tuition reimbursement. After feeling threatened by the General Manager, the claimant sent a letter describing her feelings to the Senior Human Resources Generalist, the General Manager, and top level management members. The claimant sarcastically ended her e-mail by stating:

It is my belief that from what took place yesterday and over the past year it is clear to me that Iron Mountain has every intention to stop any growth that I may want within Iron Mountain. I would like to thank all parties involved in this decision for their support and encouragement, it feels great being a Mountaineer!

The claimant did not have to be back at work until November 27, 2007, due to the holiday and taking November 26, 2007, off to get a flu shot. On Sunday, November 25, 2007, the claimant stopped into the office to work on the payroll. She looked at her e-mail and saw a response from Mike Smith, Vice President, in which he indicates that he is confused by the claimant's actions. He counseled her that escalating her concerns by sending her e-mail to the Chairman and Chief Operating Officer minimizes the company's ability to solve her problems. He indicated that he thought the claimant made the Senior Human Resources Generalist look bad in front of everyone. He tried to calm the claimant by empathizing with her. He asked to discuss the mater further.

The claimant became emotional when she read the Vice President's response. She wrote him that she was confused by his response. She cited unspecified situations that had gone on for a year and indicated that everyone was pointing the finger at her. She told the Vice President that

she cannot work under those circumstances. After she sent the e-mail, she packed all her belongings that she wanted to take with her and left. On November 26, 2007, when she sees her physician to get her flu shot, she told her about her work situation. The physician treats her for depression and on November 29, 2007, wrote a note stating the claimant's work environment has contributed to her condition. The claimant did not give the note to the employer.

The claimant did not appear for work on November 27, 28, or 29, 2007, or notify the employer of her absence. The employer did not understand that the claimant's e-mail of November 25, 2007, was meant to be a notice of resignation. On November 30, 2007, the employer sent her a separation letter. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work 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.

871 IAC 24.26(4) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (4) The claimant left due to intolerable or detrimental working conditions.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). The claimant argues that she quit due to intolerable or detrimental working conditions. The conditions that she believes were intolerable or detrimental are the employer's indication of an intention that it would not reimburse the claimant for one class in one semester of school, the co-worker's animosity, the General Manager's comments and actions on November 20 and 21, 2007, and the Vice President's comments that the clamant received on November 25, 2007.

871 IAC 24.25(13) 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:
>
> (13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). In the absence of agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving the employment. Deshler Broom Factory v. Kinney, 140 Nebraska 889, 2 N.W.2d 332 (1942). When an employee quits work because the employer did not pay wages when they were due without an agreement to the contrary, her leaving is with good cause attributable to the employer. In this case, the claimant understood the approval process for reimbursement of tuition. She knew that it was dependent on approval from the company. This is evidenced in her e-mail of November 21, 2007, in which she requests the form. The claimant and the employer had an agreement to pay the tuition so long as certain conditions were met. The evidence shows that the claimant was continuing to gather information to make the case that the tuition should be paid. The evidence also shows that in an e-mail from the employer on November 23, 2007, it was willing to discuss the matter. The employer and claimant were in the middle of negotiations when the claimant separated herself from employment. The administrative law judge finds that the employer did not fail to pay the claimant monies owed her for tuition when they were due. When an employee quits work because she is dissatisfied with her wages and knew the rate of pay when hired, her leaving is without good cause attributable to the employer. One of the reasons the claimant left work is that she wanted the employer to reimburse her for tuition of a class that it considered to be unrelated to her job and the claimant knew the rule at the time she started taking classes.

871 IAC 24.25(21), (22), and (28) 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:
>
> (21) The claimant left because of dissatisfaction with the work environment.
>
> (22) The claimant left because of a personality conflict with the supervisor.
>
> (28) The claimant left after being reprimanded.

When an employee quits work because she is dissatisfied with the work environment, has a personality conflict with her supervisor, or after having been reprimanded, her leaving is without good cause attributable to the employer. The claimant's actions indicate she was not actually afraid of the General Manager, because she freely sent an e-mail criticizing the company to him. The claimant left work because she was dissatisfied with her work environment because of a

personality conflict with her former supervisor and because she was reprimanded on November 20 and 25, 2007.

It is important to note that the claimant did not form an intention to resign after the notification by the company of failure to reimburse for tuition, after she was reprimanded on November 21, 2007, or after various dealings with the former owner. She formed the intent to quit on November 25, 2007, when she received the reprimand from the Vice President. The issues that comprise the claimant's description of an intolerable or detrimental workplace when taken individually are presumed to be without good cause attributable to the employer.

The second issue that the claimant addresses for her resignation is her medical condition.

871 IAC 24.26(6)b provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (6) Separation because of illness, injury or pregnancy.
>
> b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.
>
> In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

An individual who voluntarily leaves their employment due to an alleged work-related illness or injury must first give notice to the employer of the anticipated reasons for quitting in order to give the employer an opportunity to remedy the situation or offer an accommodation. Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991).

Inasmuch as the claimant did not give the employer an opportunity to resolve her complaints prior to leaving employment, the separation was without good cause attributable to the employer. The claimant did not give the employer a copy of the physician's note or discuss her condition with it. The employer was unaware of the claimant's medical condition. Benefits are denied.

Iowa Code section 96.3-7 provides:

> 7. Recovery of overpayment of benefits. 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.
>
> 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.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's December 21, 2007 decision (reference 02) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid benefits in the amount of $5,111.00.

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Beth A. Scheetz
Administrative Law Judge

_____
Decision Dated and Mailed

bas/kjw