IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

Appeal Number: 04A-UI-00075-RT
OC: 11-30-03 R: 04
Claimant: Appellant (1)

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 Workforce Development. 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.

CAMILLE E ASMUSSEN
NKA CAMILLE E TILLIS
1820 GRANT ST #5205
BETTENDORF IA 52722

ADEL WHOLESALERS INC
PO BOX B
BETTENDORF IA 52722

SHARON SINNARD
ATTORNEY AT LAW
PO BOX 174
BETTENDORF IA 52722

CAMILLE E ASMUSSEN
NKA CAMILLE E TILLIS
4364 – 18TH ST
BETTENDORF IA 52722

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.4-3 - Required Findings (Able and Available for Work)

STATEMENT OF THE CASE:

The claimant, Camille E. Asmussen, now known as Camille E. Tillis, filed a timely appeal from an unemployment insurance decision dated December 24, 2003, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on January 27, 2004 with the claimant participating. The claimant was represented by Sharon Sinnard, Attorney at Law. Although the claimant had requested a subpoena for Trudy Loerzel and a subpoena was issued, the claimant chose not to call Ms. Loerzel as a witness. The administrative law judge attempted to call Diane Frascello on the second day of the hearing but was unable to reach Ms. Frascello. Stephen K. Gray, Chief Financial Officer, participated in the hearing for the employer, Adel Wholesalers, Inc. Judy K. Dugan, Human Resources

Director, was available to testify for the employer but not called because her testimony was unnecessary and would have been repetitive. Claimant's Exhibits A, B and C were admitted into evidence.

The hearing began on January 27, 2004 when the record was opened at 10:05 a.m. and was recessed at 10:55 a.m. The hearing was recessed because the administrative law judge had another hearing but evidence was not finished in this matter. The hearing was to be reconvened on Friday, January 30, 2004 at 11:00 a.m. The administrative law judge reached the parties on January 30, 2004 and the hearing continued when the record was opened at 11:03 a.m. and ended, finally, when the record was closed at 11:30 a.m.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer full-time, most recently as a clerk in the accounting department handling accounts payable from 1981 until she separated from her employment on November 14 or November 15, 2003. On November 3, 2003, the claimant brought in a letter of resignation dated October 31, 2003 and gave it to the employer's witness Stephen K. Gray, Chief Financial Officer. It was to be effective November 14 or November 15, 2003. The claimant indicated in the letter that she was resigning because of stress. The claimant was not told that she had to resign or be discharged and was not, in fact, told that she would be discharged at all.

The claimant prepared the letter because the employer was undergoing a computer conversion which was causing difficulties for all employees, including the claimant. The claimant alleged that she was having health problems in as much as she was not sleeping and was sick to her stomach, had panic attacks and was grinding her teeth. However, the claimant's physician did not say the claimant had to quit her employment but did prescribe medication. The claimant did express concerns to Mr. Gray and others about these matters and indicated, as shown at Claimant's Exhibit A, that she might have to quit. Whenever the claimant expressed these concerns to Mr. Gray, he assured her that things would get better over time and that she needed to be patient. He understood that the claimant and the other employees were having a difficult time with the computer conversion. The employer had hired a computer consultant and had provided training for the employees in the use of the new computer system. Mr. Gray informed the claimant that the employer was working through the problems and that she just had to do the best job she could. The claimant was never reprimanded in any fashion for any alleged failures on the part of the claimant in regards to the new computer system. All the employees were encountering stress from the new computer system as all of them got used to the system. Concerning the claimant's problems, the employer had a consultant hired to assist any employee having problems and also provided up to three temporary helpers for the claimant. Nevertheless, the claimant had some problems with PICK tickets, a sample of which appears at Claimant's Exhibit C. The claimant was instructed to place the problem PICK tickets aside for others to do and the claimant did so and others did take care of the problem PICK tickets. For a majority of the PICK tickets, the claimant had no problems and was able to deal with them properly in the computer system. Other employees helped with the problem PICK tickets. There were delays with the new computer system and some customers called and made complaints but the claimant was never reprimanded for any of these delays. The claimant was learning how to fix more and more of these tickets as time went on but still separated.

The claimant has placed no restrictions on her ability or availability for work and she is making an active and earnest search for work making two in-person job contacts each week.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.

2. Whether the claimant is ineligible to receive unemployment insurance benefits because she is and was not able, available, and earnestly and actively seeking work. The claimant is not ineligible to receive unemployment insurance benefits for this reason.

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(2), (3), (4), (1) 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:
>
> (2) The claimant left due to unsafe working conditions.
>
> (3) The claimant left due to unlawful working conditions.
>
> (4) The claimant left due to intolerable or detrimental working conditions.
>
> (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

871 IAC 24.25 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.

871 IAC 24.25(21), (33) provides:

> (21) The claimant left because of dissatisfaction with the work environment.
>
> (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 first issue to be resolved is the character of the separation. The employer maintains that the claimant voluntarily quit when she provided her resignation. The claimant seemed to maintain that she was forced to resign. However, even the claimant concedes that no one instructed the claimant that if she did not resign, she would be discharged. The evidence establishes quite the contrary. The evidence establishes that the employer was attempting to work with the claimant concerning the difficulties she was having with the computer system as the employer was with the other workers similarly effected. There is not a preponderance of the evidence that the claimant was discharged or that she was forced to resign or faced discharge. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily. The issue then becomes whether she left her employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant testified that she left her employment or was terminated because of serious stress caused by the employer's computer conversion. No doubt the employer's computer conversion caused difficulties for all of the employees. The evidence clearly establishes that. However, the evidence also establishes that the employer was attempting to assist the employees in working through those difficulties. The employer hired a consultant and also paid for training for the employees. The claimant testified that she did not think she had received enough training but conceded that she had had some and that there was a consultant available. The claimant testified that she had substantial difficulties with PICK tickets, a sample of which is at Claimant's Exhibit C. However, the claimant conceded that any problem PICK tickets could be set aside and were set aside for others to do. A majority of the PICK tickets were not problems and the claimant was able to enter them appropriately. The problem PICK tickets did cause a delay in the system but the employer attempted to assist the claimant by hiring as many as three temporary workers and having two other regular employees assist with the problem PICK tickets. The claimant was never once reprimanded for any failures on her part related to the computer program or other failures. Even the claimant conceded that she was learning how to fix more and more of the PICK tickets. The administrative law judge understands that the claimant would be frustrated with the change but the employer recognized this and tried to assist all employees in overcoming any of the difficulties caused by the computer conversion.

The claimant did express concerns to the employer's witness, Stephen K. Gray, Chief Financial Officer, and others, about these conditions and even indicated that she might have to quit over them. On every occasion that she expressed such concerns she was told that things would get better over a period of time, to be patient, that all employees were in the same boat, and the claimant just needed to do the best job she could. All of the employees were encountering some stress. The claimant was even informed at one time that the employer did not want to lose a valuable employee but the claimant had to do what she felt was in her interest. The

claimant even provided a statement to the employer, at Claimant's Exhibit A, regarding her concerns. But the employer's response was as noted above.

The administrative law judge understands the claimant's frustrations as he would the frustrations of all employees, but must conclude under the evidence here that the claimant has failed to demonstrate by a preponderance of the evidence that the computer conversion or the stress related thereto caused her working conditions to be unsafe, unlawful, intolerable or detrimental, or that he was subjected to a substantial change in her contract of hire. Rather, it appears to the administrative law judge that the claimant quit because of a dissatisfaction with the work environment or because she felt that her job performance was not to the satisfaction of the employer or had concerns about her job performance but the employer had not requested the claimant to leave and therefore, these reasons are not good cause attributable to the employer.

The claimant also alleged that she was having health problems due to the stress caused by the computer conversion. However, the claimant herself testified that she was not told by her physician that she needed to quit her job. The administrative law judge must conclude that the claimant has failed to present competent evidence showing adequate health reasons to justify her termination and there is also no evidence that the claimant specifically requested any accommodations which were not provided by the employer. See 871 IAC 24.46(6)(b). In fact, the employer provided the claimant assistance up to three temporary workers and two regular workers to assist the claimant with some of her duties, as noted above.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

Iowa Code Section 96.4-3 provides:

> An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:
>
> 3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge concludes that the claimant has the burden of proof to show that she is able, available, and earnestly and actively seeking work under Iowa Code Section 96.4-3 or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met her burden of proof to demonstrate by a preponderance of the evidence that she is and was at all material times hereto able, available, and earnestly and actively seeking work. The claimant so testified at the hearing and there is no evidence to the contrary. Accordingly, the administrative law judge concludes that the claimant is able, available, and earnestly and actively seeking work

and is not ineligible to receive unemployment insurance benefits for that reason. However, as noted above, the claimant is disqualified to receive unemployment insurance benefits because she left her employment voluntarily without good cause attributable to the employer.

DECISION:

The representative's decision of December 24, 2003, reference 01, is affirmed. The claimant, Camille E. Asmussen, now known as Camille E. Tillis, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits.

tjc/b