

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDRA L LA BAW
Claimant

APPEAL NO. 09A-UI-15486-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEDAR VALLEY HUMANE SOCIETY
Employer

OC: 09/20/09
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 7, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on January 27, 2010, in Cedar Rapids, Iowa. Claimant participated. The claimant was represented by William H. Roerman, Attorney at Law. Employer participated by Bernard Lettington, President of the Board of Directors, and Sara Walker, Human Resources Consultant with Merit Resources. The employer was represented by Joseph Moreland, Attorney at Law. The record consists of the testimony of Sandra La Baw; the testimony of Susan Manson; the testimony of Bernard Lettington; the testimony of Sara Walker; Claimant's Exhibits A and C; and Employer's Exhibit 2.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer operates an animal shelter in Cedar Rapids, Iowa. The claimant was initially hired on September 7, 2004, as a kennel worker. At the time of the separation of employment, she was a co-director of operations. Her responsibilities included oversight of employees; finances; budgeting; and scheduling.

At some point in July 2009, the claimant perceived that there was a difference of opinion between her and some of the members of the Board of Directors (herein Board) concerning management of the shelter population. The Board had hired a consultant to review the shelter operations, specifically to address overcrowding and infection control. The claimant wanted clarification of the board's policy and if a particular direction was chosen by the board, she and the board would need to part ways.

On August 19, 2009, the claimant and another employee, Susan Manson, sent an email to Bernard Lettington, the president of the Board. Ms. Manson was the development director at the shelter. This email stated as follows:

We are writing to you today to request a 15 minute meeting with the Board or it's [sic] delegate to review the contents of our outlined separation offer. It's our belief that our departure will be in the best interests of the animals..

Both of us are requesting the following identical separation offer

1. Full salary and benefits for ninety days. This will allow us some time to secure employment elsewhere.
2. All earned vacation and sick to be paid on our last checks.

In turn, we will:

1. Offer the board a two week notice with an exercise option of a maximum of four week.
2. Sign a **mutually agreed** upon separation agreement. (emphasis in original)

Again, please contact us to review our offer. We have given many years and countless hours to the CVHS mission. We hope you are in agreement and we hope you accept our offer. This will allow us to move forward.

We would appreciate a response by Thursday, August 20th by 12:00 p.m. We would like to move quickly.

Thank you in advance for your time and consideration.

(Exhibit A, p. 1)

The terms of the claimant's offer were not accepted by the Board. Instead, the Board presented a counter offer that was prepared by its human resources consultant. (Exhibit 2) This proposed agreement was presented to the claimant in person on August 24, 2009. The claimant did not sign the agreement and did not agree to the terms. She was advised to review the agreement with her attorney.

On August 28, 2009, at 8:47 a.m., the claimant sent the following email to Mr. Lettington:

Bernie,

After consulting with our attorney we have been advised of the following:

The CVHS has rejected our terms for resigning and therefore at the present time we have not agreed to resign. Thus, it is uncertain that a transition plan is necessary or when it will be necessary.

(Exhibit A, p. 11)

Mr. Lettington responded by email on Sunday, August 30, 2009. That email stated:

Your resignations were submitted on Wednesday, August 19 and have been accepted. You didn't dispute this during our meeting with Merit Resources on Monday, August 24.

Your last day of work will be Wednesday, September 2, as discussed with you during our meeting on August 24.

The separation agreement is still valid and the dates and deadlines within the agreement are still accurate.

(Exhibit A, p. 11)

The claimant's attorney then wrote the following on August 31, 2009:

I represent Sandra Le Baw and Susan Mason [sic]. Your email below was forwarded to my attention. Your reference to a "separation agreement" is incorrect.

I understand that on August 19, Ms. Le Baw and Ms. Mason [sic] offered to resign under specified conditions. I also understand that you subsequently rejected that offer by making a counter offer for their termination under different condition. Le Baw and Mason [sic] have not accepted your counteroffer.

Since Cedar Valley Human Society didn't accept Le Baw and Mason's [sic] proposal and since they haven't accepted your counter proposal, there is no "agreement" of any kind. As the employer, Cedar Valley may terminate Le Baw and Mason [sic] as of September 2. However that termination will have nothing to do with a resignation. It will be an involuntary discharge. Le Baw and Mason [sic] will have the right any discharged employee would have under these circumstances. It will be unfortunate if Cedar Valley is unwilling to work through these issues in a businesslike way.

(Exhibit A, p. 12)

The claimant reported for work on September 3, 2009. Mr. Lettington was at the shelter along with Sara Walker. Some new employees were starting that day and the claimant was allowed to get those employees started. Mr. Lettington then told the claimant that she no longer worked at the shelter and the employer was letting her go.

The employer subsequently had a letter sent to the claimant on its behalf outlining the claimant's benefits under COBRA. This letter is dated September 17, 2009, and specifically refers to the claimant's qualifying event as an "involuntary termination." (Exhibit C, p. 1)

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act

carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in this case has failed to establish that the claimant voluntarily quit her job. The separation of employment on September 3, 2009, was initiated by the employer. Although the claimant had offered to resign, her resignation was contingent on the employer's acceptance of specific terms set forth in the email of August 19, 2009. The employer did not accept those terms and instead offered a separation agreement that was never signed and never agreed to by the claimant. The employer knew that the claimant did not accept the terms in the proposed separation agreement and proceeded to terminate the claimant on September 3, 2009.

An employer cannot arbitrarily "accept" a resignation that is contingent upon certain conditions and then dictate the terms of the resignation. The claimant was terminated involuntarily. There is no showing of misconduct. Accordingly, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated October 7, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css