IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

ELLA BOKMAN
Claimant

SOUTHEASTERN COMMUNITY COLLEGE
Employer

APPEAL NO: 19A-UI-07577-JE-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/01/19
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 19, 2019, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 10, 2019. The claimant participated in the hearing. Laurie Hempen, Director of Human Resources and Deb Mulch, Director of Adult Education and Literacy, participated in the hearing on behalf of the employer. Employer's Exhibits One through Six were admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a three-fourths time adult education and literacy instructor for Southeastern Community College. She worked 20 hours per week at the Southeastern Community College Mount Pleasant campus and 10 hours per week for the college at the Burlington Correctional Residential Facility (BCRF) for men. She started her Southeastern College campus employment January 17, 2018 and started her BCRF employment October 22, 2018. She voluntarily left her employment July 2, 2019.

Teaching at BCRF requires security clearance from the Eighth Judicial District Department of Correctional Services. On June 20, 2019, Residential Supervisor for BCRF Nick Baker sent the employer a memo stating the claimant would no longer be allowed back at BCRF (Employer's Exhibit Two). Mr. Baker cited two recent issues of which he viewed on the surveillance camera where the claimant brought her seven-year old step-daughter into the facility and where she allowed a client to use her cell phone (Employer's Exhibit Two). Allowing a minor into the facility violated the Prison Rape Education Act (PREA). The claimant had the child with her when she was asked to pick up a client's verification information as he was trying to complete HiSET (High School Equivalency Test) testing. He was allowed to start the test based on the claimant's lead instructor's word that he met the requirements to test but they

were waiting for the remainder of the information. The claimant was faced with the choice of leaving the child in the car on a hot day with the doors locked and the air conditioner running or taking the child inside. She initially left the child in the car but after the process of retrieving the paperwork took longer than she anticipated she went outside and got her step-daughter and brought her inside to her classroom where there was at least one client. After he completed the required information on her phone with the claimant's assistance, the claimant and the child left the building. The other issue involved allowing an inmate to use her cell phone in violation of the BCRF policy which prohibits staff from allowing client's to use their phones. The claimant acknowledges she let clients use her cell phone but insists she had permission from a guard so clients could sign up for HiSET, get their user name, password and voucher number for testing.

After the employer received Mr. Baker's memo banning the claimant from BCRF it conducted its own investigation and determined there was no evidence to overturn the decision made by BCRF. On June 30, 2019, the employer notified the claimant her 10 hour position with BCRF was terminated but told her she would receive her contract for her 20 hour position July 1, 2019, as no security clearance was required for that position. The employer told the claimant that if enrollment increased for the Adult Education and Literacy classes there would potentially be an opportunity for the claimant to increase her hours at the Mount Pleasant campus. The claimant did not call or show up for her classes June 28 or July 1, 2019, and sent an email to several administration members complaining about the situation with BCRF and defending herself while criticizing Mr. Baker and stated she had "no choice but to end her service with SCC (Southeastern Community College) (Employer's Exhibit Six). The employer confirmed the claimant resignation July 1, 2019, and processed it July 2, 2019, after asking the claimant to return the equipment and keys she was assigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment with good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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.

Iowa Admin. Code r. 871-24.26(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:
>
> (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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

The claimant was placed in a no-win situation when she was instructed to pick up the client's information from BCRF so he could continue his HiSET test when she was off work and had her seven-year old stepdaughter with her. She originally left her in the car with the doors locked and the air-conditioner on but became concerned when her work inside took longer than she anticipated. As a result, she brought the child in with her. The situation would be different if she stopped by the facility without any work-related reason and brought the child into the building and her classroom with her. That, however, was not the case.

The other issue cited by BCRF for the claimant's ban was that she allowed a client to use her cell phone. The claimant credibly testified she had permission to do so from a guard so the client could sign up for a HiSET test. The claimant's testimony was not contradicted and consequently carries more weight than a memo from BCRF which was not subject to questioning.

Additionally, the claimant never received any training about these situations and was never warned about her conduct before being banned from the facility.

Finally, by not allowing the claimant to teach at BCRF and eliminating the 10 hours that accompanied that position, the question becomes whether that is a change in the claimant's contract of hire such that it would result in her receiving benefits. Because BCRF banned the claimant from teaching at that facility, the employer had no choice but to issue her a new contract to be a half-time teacher rather than a three-quarter time employee which resulted in the claimant losing one third of her hours. Inasmuch as the claimant would suffer a change in the number of hours and wages of the original terms of hire, the change is considered substantial. Consequently, benefits must be allowed.

DECISION:

The September 19, 2019, reference 01, decision is reversed. The claimant's separation from employment was attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/scn