

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**HEATHER N TULLY**  
Claimant

**FAMILY DOLLAR SERVICES INC**  
Employer

**APPEAL 19A-UI-07485-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/25/19**  
**Claimant: Respondent (2)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

On September 23, 2019, the employer filed an appeal from the September 11, 2019, (reference 01) unemployment insurance decision that allowed benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on October 15, 2019. Claimant participated. Timothy Tully observed. Employer participated through human resource generalist Kirsten Witherspoon. Employer's Exhibits 1 through 3 were received.

**ISSUES:**

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on May 31, 2018. Claimant last worked as a part-time repack order filler. Claimant was separated from employment on August 23, 2019, when she resigned.

Claimant was diagnosed with fibromyalgia 11 or 12 years ago. On August 2, 2019, claimant applied for intermittent leave under the Family and Medical Leave Act (FMLA).

On August 15, 2019, claimant reported that she injured her left arm at work. Claimant saw a company medical provider who issued restrictions of no use of her left arm. At some point thereafter, the provider issued an additional restriction of no lifting more than ten pounds.

Employer assigned claimant various tasks that did not require the use of her left arm. On one day, claimant was assigned to apply labels. Claimant got frustrated and left work early.

Employer also assigned claimant to power wash and sweep, which did require at least some motion in her left arm. The work caused claimant's arm to be sore.

Claimant informed repack department manager Greg Ueland that the work hurt her arm and that she needed to take a few days off to heal. Ueland said that was okay and that they could find different work for her to do.

On August 23, 2019, claimant returned to work. Claimant and Ueland sat down in his office. Ueland had a resignation form on his desk. Ueland asked claimant if she wanted to resign. Claimant had previous warnings for attendance and had not yet been approved for FMLA leave. Claimant was afraid that if she did not resign she was going to be terminated. Claimant left and talked to her husband about the issue. Claimant returned and completed the resignation paperwork, stating she was resigning to allow her left arm to heal. Claimant did not ask Ueland if he was terminating her employment. Ueland never told claimant that he would terminate her employment if she did not resign or that he could not find other work for her to do that complied with her restrictions.

Claimant completed a resignation notice that stated she was resigning in order to let her left arm heal.

About a week later, claimant received paperwork in the mail stating her request for FMLA leave had been approved. Claimant contacted employer to see if there was anything employer could do. Employer stated there was nothing they could do that they had not already done.

#### **REASONING AND CONCLUSIONS OF LAW:**

The first issue is whether claimant resigned or was discharged by employer. The employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge. Iowa Code § 96.6(2). 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 this case, claimant resigned. Although claimant suspected she might be terminated if she did not resign, employer never told claimant it was going to terminate her employment and claimant never asked the question. Claimant had time to communicate with her husband regarding the issue and ultimately made the decision to voluntarily complete the resignation paperwork.

The next issue is whether claimant resigned for a good cause reason attributable to 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(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 the 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.

As stated in her resignation notice, claimant resigned due to a work-related health condition. Claimant has established the condition was work related and that it was aggravated by her regular job duties. However, claimant has not established that she informed the employer she intended to quit unless it found her work that complied with her accommodations. Rather than having that conversation, claimant resigned.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). In this case, she has failed to do so.

Claimant has not received any payments since filing this claim for unemployment insurance benefits. Therefore, the issues regarding overpayment are moot and will not be discussed further in this decision.

**DECISION:**

The September 11, 2019, (reference 01) unemployment insurance decision is reversed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Christine A. Louis  
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Decision Dated and Mailed

cal/scn