

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARRON A COLE
Claimant

APPEAL NO. 09A-UI-04722-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINEGARD COMPANY
Employer

**Original Claim: 02/22/09
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Charron A. Cole (claimant) appealed a representative's March 18, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Winegard Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 21, 2009. The claimant participated in the hearing. Cris Scheibe of TALX Employer Services appeared on the employer's behalf and presented testimony from three witnesses: Carl Ingwersen, MaryJo Fisher, and Thone Sysouchahn. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

After a prior period of employment with the employer through a temporary employment firm, the claimant started working directly for the employer on October 12, 1998. She worked full time as an assembler on the second shift of the employer's Burlington, Iowa, satellite dish manufacturing facility. Her last day of work was February 4, 2009.

The claimant called in absences on February 5 and February 6. On at least one of those occasions, she expressed thoughts of quitting her employment because she did not want to do the kind of assembly she was currently doing, but rather wanted to quit and come back as a temporary employee doing work on the first shift. She had no medical restrictions that would have precluded her from the work she was and had been doing. She had some thought that she might be fired for some unknown reason, as a comment was made to her to that effect in the fall of 2008 and again by the business owner in a social, non-work setting in December. However, there had been no disciplinary action taken against the claimant that would have placed her job in jeopardy; and in verbal discussions in early February the factory manager, Mr. Ingwersen, had assured the claimant she was not going to be fired.

The employer made several attempts to dissuade the claimant from quitting. On February 9, the claimant came into the employer's human resources department seeking to sign voluntary quit papers. The human resources representative again told her to think about it some more, to sleep on it, and then, if she wished, to come back the next day. The claimant came back on February 10 and finished signing the

separation papers, indicating on the papers that she was quitting because she wanted to come back and work on a temporary basis on the first shift.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action that directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action that directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that her separation was not “voluntary,” as she had not desired to end the employment; she argues the employer’s comments to her in the fall and in December alluding to discharge means her separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 871 IAC 24.25 provides that, 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 rule further provides that there are some actions by an employee that are construed as being voluntary quit of the employment, such as leaving because of a belief that the employer might be considering discharge, but where the employer had not made any actual decision for discharge. 871 IAC 24.25.

The employer clearly assured the claimant prior to her leaving that her job was not in jeopardy, that she was not going to be discharged; her decision to leave despite this assurance results in the separation being considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving because of a desire to work a different shift than she had previously been working is not good cause for quitting. The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative’s March 18, 2009 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of February 10, 2009, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw