

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALYSSA MARTINEZ
Claimant

APPEAL 21A-UI-18564-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOODWILL INDUSTRIES OF NE IA INC
Employer

**OC: 06/27/21
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 20, 2021, (reference 01) unemployment insurance decision that denied benefits based upon her discharge due to excessive unexcused absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on October 14, 2021. Claimant Alyssa Martinez participated personally. Employer Goodwill Industries of NE IA, Inc. participated through manager Fae Randall and was represented by Dennis Mullins. Employer's Exhibits 1 – 4 were admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a sales associate from August 4, 2020, and was separated from employment on March 20, 2021. Claimant's last day worked was March 8, 2021.

Employer has a policy in place which requires employees to call in if they are not going to be at work. There is also a policy in place which states that if employees are a no-call/no-show for three consecutive work days, they are considered to have abandoned their jobs and are separated from employment. Claimant has a form signed by claimant acknowledging receipt of the employee handbook, which contains this policy. (Exhibit 4)

According to employer claimant was absent from work without notifying them on March 10, 2021. Claimant was absent from work without calling the next two days, March 11 and March 12, 2021. Employer reached out to claimant on several occasions, but was unable to reach her until March 18 or 20, 2021. Continuing work was available for claimant and her job was not in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code §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 voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case claimant was absent from work on the following dates: March 10, 11, and 12, 2021. Claimant knew that she was supposed to report any absences prior to her scheduled shift start time. Claimant failed to report these absences in violation of the employer's policy. While claimant contends she was unaware she was supposed to work those dates, she admits she knew how to obtain her schedule and at no point did she contact employer to see if she was scheduled to work after March 8, 2021. Claimant could not recall what date she believed she was next scheduled to work.

Iowa Admin. Code r. 871-24.25(4) 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 § 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 § 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:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer.

DECISION:

The August 20, 2021, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left her 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.



Stephanie Adkisson
Administrative Law Judge

October 21, 2021
Decision Dated and Mailed

sa/kmj