

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMSEN, DEBRA, K
Claimant

APPEAL NO. 12A-UI-04740-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY CLINICS INC
Employer

**OC: 03/25/12
Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Debra Thomsen filed a timely appeal from the April 18, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 16, 2012. Claimant participated. Jessica Lingo, Human Resources Business Partner, represented the employer and presented additional testimony through Elizabeth May, Director of Operations. Exhibits One, Two and Three were received into evidence.

ISSUE:

Whether Ms. Thomsen separated from the employment for a reason that would disqualify her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Debra Thomsen was employed by Mercy Clinics, Inc. as a full-time Clinic Manager from 1984 until March 2, 2012, when she voluntarily quit in response to a reprimand.

On February 29, 2012, Elizabeth May, Director of Operations, and Dr. Timothy McCoy, Clinic Director, met with Ms. Thomsen to discuss various concerns that they had with Ms. Thomsen's performance as Clinic Manager. The February 29 meeting was a follow-up to a letter of reprimand the employer had prepared on February 13, 2012. The employer reviewed the letter of reprimand with Ms. Thomsen on February 29. In the letter of reprimand the employer indicated: "If immediate progress is not shown through observation, reports, staff and physician feedback, and future survey results, your employment with Mercy clinics will be terminated."

The employer's approach to the February 29 meeting was consistent with the notion, set forth in the letter of reprimand, that Ms. Thomsen's employment would continue for the present, but could end at some future point if the employer deemed her performance unsatisfactory. During the meeting, Ms. Thomsen pressed Dr. McCoy regarding what course of action he thought she should choose. Dr. McCoy hesitated but then stated that he thought Ms. Thomsen should resign. Dr. McCoy did not tell Ms. Thomsen that she had to resign and did not tell her that she

would be discharged if she did not resign. Ms. Thomsen's position as Clinic Manager required regular interaction with Dr. McCoy.

After the February 29 meeting, Ms. Thomsen consulted with an attorney and consulted with Healing Resources Representative Kevin Elsberry, and decided it would be best for her career and future employment prospects to resign, rather than face possible discharge from the employment at some point in the future. On March 2, Ms. Thomsen submitted her written resignation to Ms. May.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). 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.

871 IAC 24.26(21) 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:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

In analyzing quits in lieu of discharge, the administrative law judge considers whether the evidence establishes misconduct that would disqualify the claimant for unemployment insurance benefits.

This case does not present a quit in lieu of discharge. Instead, the evidence establishes a quit in response to a reprimand. The evidence indicates that Ms. Thomsen reached her decision to quit the employment only after consulting with an attorney and with a trusted human resources representative to discuss her career situation and the impact that a *future* discharge might have on her future employment prospects.

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.

When an employee quits in response to a reprimand, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(28).

The weight of the evidence in the record establishes that Ms. Thomsen did indeed voluntarily quit two days after the employer met with her for the purpose of issuing a formal reprimand.

Ms. Thomsen elected to separate from the employment rather than to continue in the employment and attempt to work toward satisfying the employer's expectations as set forth on the February 13, 2012 letter. The evidence fails to establish intolerable or detrimental working conditions that would have prompted a reasonable person to leave the employment. See 871 IAC 24.26(4).

Ms. Thomsen voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Thomsen is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Thomsen.

DECISION:

The Agency representatives April 18, 2012, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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