

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MICHELLE R FIX**  
Claimant

**T.M. INCORPORATED**  
Employer

**APPEAL 18A-UI-02734-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/28/18**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 19, 2018, (reference 01) unemployment insurance decision that denied benefits based on her voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on March 27, 2018. The claimant participated and testified. The employer participated through Human Resource Administrator Scott Cort.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a kit tech from April 8, 2013, until this employment ended on January 15, 2018, when she was separated from employment.

The last day claimant actually worked was October 12, 2017. At that time she was suffering from a non-work related injury that required light duty. No light duty was available, so claimant was placed on leave, with the instruction to have her doctor fill out FMLA paperwork, provided to her by the employer. Claimant was also instructed to let the employer know when there were updates in her condition. The claimant had a doctor's appointment on October 13 and was directed to follow-up with Cort after her appointment. Cort called and texted claimant on October 13 to see how her appointment went, but did not hear back. Cort called and texted claimant again on October 16, with no response. When he did not hear anything by October 18, he called local law enforcement to perform a welfare check. Officers were able to locate claimant and informed her, the employer was looking for her and needed her to call them. The officers reported claimant said she would call, but Cort did not hear from her. Claimant testified she did not contact the employer because she did not have any updated information to provide.

On October 20 Cort again called and texted claimant and did not receive a response. That same day a certified letter was sent to claimant at her last address of record asking her to contact the employer. The letter was returned to the employer as unclaimed. Cort tried texting and calling claimant again on October 21, again with no response. On October 24, 2017, the employer received claimant's FMLA paperwork, but determined more information was needed regarding her restrictions or potential return to work dates. Cort attempted to call claimant again on October 26, 27, 30, and 31, with no response. On October 31, 2017, another certified letter was sent to claimant informing her that more information was needed regarding her FMLA paperwork. This letter was also returned unclaimed. Claimant testified that she did not receive either of these letters because they were being sent to an old address and that she had provided the employer with a new address on October 12.

On December 1, 2017, a third certified letter was sent to claimant. This letter summarized her discussion with Cort on October 12, informed claimant the employer had questions they needed answered and had attempted to contact her numerous times, and informed her that her previous FMLA paperwork submission was insufficient. The letter advised claimant that she was required to contact the employer within the next ten days or immediately upon receipt of the letter, or they would consider her to have voluntarily quit her employment. It also noted if she contacted them outside of the ten days and had a valid reason for not contacting them earlier, her employment may be reinstated. By this time claimant had set up a new post office box, which the letter was forwarded to, though claimant did not actually receive it until sometime towards the end of December 2017 or early January 2018. When the employer still had not heard from claimant by January 15, 2018, she was formally separated from employment. On January 19, 2018, claimant came in to speak to Cort about the letter. Cort asked claimant why it took her so long to contact him and she responded, "You got what you wanted, you wanted me out of here." Cort assured claimant that was not the case and she responded that she did not contact him because she did not have any additional information to provide. During the hearing the claimant testified she did not contact the employer sooner because she assumed she had already been separated, as it was more than ten days after the letter was written.

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

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to employer.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

Claimant was given notice in writing by the employer that she should contact them regarding her work status within ten days of December 1, 2017 or immediately upon receiving the letter. This was approximately six weeks after she had been informed by local law enforcement, through a welfare check, that the employer was trying to get ahold of her. Claimant was specifically advised in the letter that if she failed to contact the employer, the employment relationship would end. Claimant did not contact the employer in October because she did not have any updates to provide. She waited approximately two to three weeks to contact them after receiving the December letter because she assumed her employment had already ended. 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. Since claimant did not follow up with the employer regarding her health status or ability to return to work, her failure to continue reporting to work or to otherwise maintain contact with the employer, was an abandonment of the job. Benefits are denied.

**DECISION:**

The February 19, 2018, (reference 01) unemployment insurance decision is affirmed. 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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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs