

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANELLE V LOGGINS
Claimant

HY-VEE INC
Employer

APPEAL 20A-UI-14792-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/09/20
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the November 11, 2020, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 15, 2021. The claimant, Janelle Loggins, did not participate. The claimant, Hy-Vee Inc. participated through Barbara Buss hearing representative, Brandy Kady, and Brandy Bogue.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a Quality Control Technician. She was employed from February 26, 2020 until August 12, 2020. Claimant's final rate of pay was \$16.00 per hour. Claimant worked an average of 40 hours per week. Claimant worked a varied schedule.

Claimant voluntarily quit on August 12, 2020. Claimant did not notify anyone that she was quitting. Claimant failed to return to work after her last shift worked. Claimant was scheduled to work on August 6, 2020, August 7, 2020 and August 8, 2020. Claimant did not call or show to work on August 6, 2020, August 7, 2020 and August 8, 2020. The employer has an attendance policy stating that employee's must call prior to each shift to report an absence. Failure to do so for three days in a row will result in discharge. The claimant was made aware of the employer's attendance policy at the time of her hire.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit for reasons not attributable to the employer. Benefits are denied.

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.

Iowa Code § 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 Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

First it must be determined whether claimant quit or was discharged from employment. 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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa

Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

A claimant who confronts his employer and demands that he be discharged and is subsequently discharged actually quits his employment. Job insurance benefits "are not determinable by the course of semantic gymnastics." *Frances v. IDJS*, (Unpublished Iowa App 1986). Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without good cause attributable to the employer. *LaGrange v. Iowa Department of Job Service*, (Unpublished Iowa Appeals 1984).

In this case, claimant had an intention to quit and carried out that intention by failing to come to work for any further scheduled shifts. She was not on vacation and she was not ill. She refused to come to work her scheduled shifts on August 6, August 7 and August 8, 2020. As such, claimant voluntarily quit.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

In this case claimant refused to come back to work. Iowa Admin. Code r. 871-24.25(27) provides:

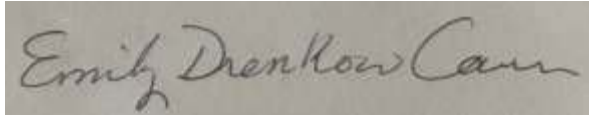
Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified 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:

(27) The claimant left rather than perform the assigned work as instructed.

Claimant's leaving the employment was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The November 11, 2020, (reference 01) unemployment insurance decision is reversed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld in regards to this employer until such time as claimant is deemed eligible.

A rectangular box containing a handwritten signature in cursive script that reads "Emily Drenkow Carr".

Emily Drenkow Carr
Administrative Law Judge

February 3, 2021
Decision Dated and Mailed

ed/scn