

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**WHITNEY EIBEN**  
Claimant

**ORBIS CORPORATION**  
Employer

**APPEAL 23A-UI-10015-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/24/23**  
**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 filed an appeal from the October 10, 2023, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on November 8, 2023. Claimant Whitney Eiben participated and testified. Employer Orbis Corporation participated through human resources manager Becky Thomas and hearing representative Peggy Leight. Claimant's Exhibits A and B were received.

**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 press operator from May 12, 2017, until this employment ended on September 1, 2023, when she voluntarily quit.

Claimant suffered a work-related foot injury beginning in 2017. Claimant was off work, per the recommendations of her physician, from June 6, 2023, through the time of her separation. Claimant's medical provider released claimant to return to work without restrictions effective July 24, 2023. (Exhibit B). Per the bargaining agreement, employer informed claimant she needed to take and pass a physical exam prior to returning to work. On July 17, 2023, claimant underwent the exam with the physical therapist, who passed on the information obtained during the exam to a physician who would decide whether claimant could return to work. During the exam, the physical therapist told claimant if the exercises hurt her foot at any point she should not continue doing them. After completing several exercises, claimant's foot began hurting, so she stopped doing the exercises per the physical therapist's instructions. The physician determined claimant did not pass the exam because she failed to complete the exercises and was not physically able to return to work.

Employer emailed claimant to notify her of the results, but claimant does not check her email, so she did not learn of the results until August 2, 2023. Employer informed claimant she could not return to work until she took and passed the physical exam. Claimant did not contact employer to schedule another exam. Claimant reached out to the union steward, who contacted employer and received the same information given to claimant, that she needed to take and pass the physical exam before she could return to work. Claimant sought FMLA approval, but was unable to obtain FMLA after July 24, 2023, because she had been released to return to work without restrictions. She did not schedule a physical with employer to return to work.

In August 2023, claimant received a letter from the employer, dated August 25, 2023, informing her that she needed to contact employer by September 1, 2023, and inform them whether she could provide the necessary certification for her absences, as she had been on unapproved leave since July 24, 2023. (Exhibit A). The letter advised claimant that if employer did not hear from her by September 1, it would be assumed that she voluntarily abandoned her position, and her employment would be terminated. On September 1, 2023, claimant collected her belongings from the workplace and notified employer she would not be returning to work.

### **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.

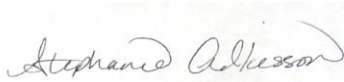
A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant has the burden of proving that the voluntary leaving was for 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 he should contact them regarding her work status by September 1, 2023. Claimant was specifically advised in the letter that if she

failed to contact the employer by that date, the employment relationship would end. Claimant was aware she needed to pass the physical exam before she could return to work. Claimant did not schedule and take another exam, nor did she contact employer after receiving the letter to discuss how to continue her employment. While claimant believed employer ended her employment, employer did not discharge claimant. At no point did employer tell claimant her employment was terminated. The August 25, 2023, letter employer stated that if claimant did not contact employer by the end of the day on September 1, 2023, that her employment would end because it would be considered job abandonment. Claimant did contact employer within the time allotted, however, she did not contact employer to discuss continuing her employment. Instead, claimant collected her belongings and notified employer on that she would not be returning to work. This demonstrates claimant's intention to end the employment relationship. As such, this is a quit without good cause attributable to employer. Benefits are denied.

**DECISION:**

The October 10, 2023, (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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Stephanie Adkisson  
Administrative Law Judge

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November 9, 2023  
Decision Dated and Mailed

S2/jkb

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.