IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

DAWN A SCHMIT Claimant **DURHAM D & M LLC** Employer	**APPEAL 15A-UI-13355-DL** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 11/08/15** **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 December 3, 2015, (reference 01) unemployment insurance decision that denied benefits because of voluntarily quitting the employment. After due notice was issued, a hearing was held on November 30, 2015, in Waterloo, Iowa. Claimant participated. Employer participated through general manager Patty Reed.

ISSUES:

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 as a part-time, split shift monitor/driver-in-training from August 25, 2015, through November 13, 2015. On November 11, claimant and bus driver Marcus Fiene presented a request for time off related to prenatal care appointments to safety instructor Carl Gakle and dispatcher Sara Wooley. The first request was for December 3, with several other appointments to follow. Gakle called Reed, who was off site that day, and she asked him to remind claimant that the December 3 request was granted but the absence would be her sixth occurrence and would result in a written warning. Gakle and Wooley consulted each other and confirmed that the employer's policy calls for a written warning at the sixth occurrence, a final written warning at the eighth occurrence, and termination at the ninth occurrence, regardless of reason. Wooley gave claimant a hug and said she would hire her after the baby is born. Neither Wooley nor Gakle has authority to hire or fire employees. In October or November Reed asked claimant to make her appointments in the morning when there was better coverage. Claimant did not check with medical providers about alternate appointment times and did not have medical advice to quit her job. Nor did she speak with Reed about her employment status or follow the chain of command to press the issue of the apparent intention to fire claimant for absences related to her prenatal care. Fiene's request for time off was denied because it was more difficult to find a replacement driver than a monitor, so he quit.

Claimant anticipated she would be discharged upon her ninth occurrence related to prenatal care appointments and quit because Fiene was not granted time off and he was going to quit. Continued work was available, at least until claimant would have reached a ninth occurrence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

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 Admin. Code r. 871-24.25(23) 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:
>
> (23) The claimant left voluntarily due to family responsibilities or serious family needs.

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).

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. Since claimant did not follow up with Reed or other management personnel, and her assumption of having been fired before reaching a ninth attendance occurrence was erroneous, her failure to continue reporting to work was an abandonment of the job. While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The December 3, 2015, (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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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

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