

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN KAY KINKOR
Claimant

APPEAL NO: 09A-UI-05365-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 03/01/09
Claimant: Appellant (2)

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Karen Kay Kinkor (claimant) appealed an unemployment insurance decision dated March 25, 2009, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with The University of Iowa (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 4, 2009. The claimant participated in the hearing. The employer participated through David Bergeon, Human Resources Specialist and Richard Loula, Head of Production and Performing Arts. Claimant's Exhibits A, B, C, and D were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time Program Associate 1/Scenic Artist Chargeperson from September 24, 2007 through September 2, 2008 when she voluntarily quit. The employer gave the claimant the option of resigning or being discharged. The employer does not believe the claimant was a good fit for the job but is not alleging there was any work-related misconduct.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

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.

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.

The employer witness testified the claimant was given the option of resigning or being discharged. The claimant admits she voluntarily quit but denies she resigned instead of being discharged. However, since the employer was the one giving the claimant the option, the employer's testimony is relied upon. Consequently, the claimant's separation is not considered a voluntary separation and she would only be disqualified from receiving benefits if her potential discharge was due to work-related misconduct. The employer witness confirmed there was no work-related misconduct.

For the reasons stated herein, the administrative law judge concludes that the claimant's separation from employment was not disqualifying. Benefits are allowed providing the claimant meets all other eligibility requirements.

DECISION:

The unemployment insurance decision dated March 25, 2009, reference 01, is reversed. The claimant qualifies for unemployment insurance benefits, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css