

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**CHRISTINE L MAST**  
Claimant

**AMERICAN BAPTIST HOMES OF THE  
MIDWEST**  
Employer

**APPEAL NO. 19A-UI-04796-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/19/19**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated June 5, 2019, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 9, 2019. Claimant participated personally. Employer participated by Amy Spangler and Ramona Graham. Claimant's Exhibits A-B and Employer's Exhibits 1-16 were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant quit for good cause attributable to employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 15, 2019. Claimant voluntarily quit on May 11, 2019.

Claimant worked as an assistant program director for employer. As employer provides services to needy individuals, the Department of Criminal Investigations has to clear all employees of employer, whether or not they are licensed. Claimant is not a licensed worker.

In October of 2018, claimant was arrested on a domestic abuse incident. Claimant did not share this information with employer. (Claimant stated that she did share information concerning her arrest with employer, but claimant's supervisor and multiple co-workers wrote statements stating claimant did not share the information. If claimant shared the information it would have had to be investigated by employer as per employer's procedures.) Claimant was given a deferred judgment in this matter.

In April of 2019, claimant was arrested for a second OWI. This matter was not adjudicated by the time of job separation. Neither was claimant's pending revocation of her probation as a result of picking up a new charge while on probation for the domestic abuse incident. Claimant

did come forth and inform employer of her new OWI charge soon after she'd received the charge in accordance with company rules.

Claimant was placed on leave after she informed employer of her new charges. Through employer's search of claimant's criminal history, employer then found out that claimant was already on probation when she picked up her new charges. Employer then requested that claimant fill out a form 2310 which allowed the Department of Criminal Investigations to do a further search into claimant's ongoing employability because of the sensitive nature of her job. Claimant did not immediately return the form, and once it was returned, the search from DCI then took a period of time. The information received found claimant, at the point of May 8, 2019 to be employable.

Throughout the entire period of time, employer kept in touch with claimant and with the home office in Minnesota. Claimant was informed on May 9, 2019 that she would not be able to be reemployed until after a final adjudication was achieved on claimant's probation revocation and her OWI charge. Claimant was not earning income during this time from this job and chose to quit her employment as employer was not allowing her to return to work.

Employer stated that claimant was not going to be terminated as a result of not sharing her domestic abuse matter with employer, and further stated that claimant was not going to be terminated as a result of receiving the new OWI charge.

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

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because she was not happy that employer decided not to let her return to work after claimant had been cleared – at least for the time being – by state authorities to continue to work.

Ordinarily “good cause” is derived from the facts of each case keeping in mind the public policy stated in Iowa Code Section 96.2. *O'Brien v. EAB* 494 N.W.2d 660, 662 (Iowa 1993) (citing *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). “The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the test of good faith.” *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). “Common sense and prudence must be exercised in evaluating all of the circumstances that led to an employee's quit in order to attribute the cause for the termination.” *Id.*

In this matter, it is helpful to break down the incidents leading to the job separation into separate time frames. Initially, claimant had not been forthcoming with employer about her domestic abuse arrest. In violation of company policies, claimant did not share the information. Employer stated that claimant was not terminated for not sharing this information. But claimant's unwillingness to share the information of her arrest put employer in a difficult situation once claimant received a second OWI arrest in April, 2019.

Once employer received the information in April, employer did put claimant on suspension as they conducted an investigation into claimant's criminal history. During the time of this investigation it was reasonable for employer to hold claimant on suspension as claimant had not previously been forthcoming and information revealed that claimant had an additional arrest over and above the one reported in April. Employer stated that claimant was also not terminated for the April arrest. As employer kept in contact with claimant, and had to get an additional form completed to ensure that claimant would be allowed to work, it was reasonable for employer to continue to hold claimant out of work until DCI gave employer the go-ahead for her continued employment.

On May 6, employer received word from DCI that claimant was allowed to continue working. Employer then decided that claimant would not be allowed to work until after the disposition of her probation violation and criminal charge. That was not set to occur until early July. In essence, claimant was going to be kept on unpaid suspension for two more months for no defined reason. Presumably, employer kept claimant on suspension because claimant might be unable to work in two months under DCI rules.

Employer chose not to bring as witness any of the decision makers in this matter. The person who did the investigation and the people from the home office were not brought to provide testimony although they could have been present. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

Claimant's decision to quit did not occur until she was informed that she would be on unpaid suspension for two additional months when employer knew that claimant was presently allowed to continue work. Employer has every right to make a choice that they did not wish to keep claimant working during this time period, but that decision does create a good cause reason attributable to employer for claimant's quit. Benefits allowed.

**DECISION:**

The decision of the representative dated June 5, 2019, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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