

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DEBBIE J DENATO
Claimant

CIRCLE TAP INC
Employer

APPEAL 16A-UI-12910-DGT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/13/16
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 30, 2016, (reference 01) that held claimant eligible for benefits beginning on November 13, 2016 through November 26, 2016, and was ineligible for unemployment insurance benefits after that date. After due notice, a hearing was scheduled for and held on December 20, 2016. Claimant participated. Employer participated by Stacy Zindel, Bar Manager.

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 November 11, 2016. Claimant gave her notice of resignation to employer on that date.

Claimant was employed as the kitchen manager. On November 11, 2016 claimant was unhappy with the mess that was left in the kitchen from the night before. Claimant got into an argument with a co-worker at 1:00 p.m. and the co-worker left the bar and went outside. Claimant continued to be agitated and was banging pots and pans around in the kitchen.

Ms. Zindel heard some of the commotion and she confronted claimant about her behavior. During the conversation claimant felt that Ms. Zindel was invading her personal space, and she did not like the way she was being treated by employer. Claimant had threatened to quit on several occasions over the past few months. After the events that transpired on that day, claimant decided it would be best if she tendered her resignation at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer, but was discharged for no disqualifying reason prior to the intended resignation date.

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).

Iowa Admin. Code r. 871-24.25(21) 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 section 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 section 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:

(21) The claimant left because of dissatisfaction with the work environment.

Iowa Admin. Code r. 871-24.25(22) 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 section 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 section 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:

(22) The claimant left because of a personality conflict with the supervisor.

Iowa Admin. Code r. 871-24.25(38) 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 section 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 section 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:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

Individuals who leave their employment due to disparate treatment are considered to have left work due to intolerable or detrimental working conditions and their leaving is deemed to be for good cause attributable to the employer. The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Dep't of Job Serv.*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Emp't Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

Claimant's decision to quit because she was reprimanded by her manager was not a good cause reason attributable to the employer. Because the discharge was in response to a resignation notice no misconduct is established. Since the employer terminated the employment relationship in advance of the resignation notice effective date, the claimant is entitled to benefits from the date of termination until the effective date of the proposed resignation.

DECISION:

The November 30, 2016, (reference 01) decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer, but was discharged prior to the resignation effective date. Benefits are allowed until November 26, 2016. Thereafter, benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/rvs