

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ECHO N MILLER
Claimant

APPEAL NO. 15A-UI-09587-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP LLC
Employer

OC: 07/26/15
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Echo Miller (claimant) appealed a representative's August 18, 2015, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Dolgencorp (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 8, 2015. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired on September 23, 2010, as a part-time sales associate. On July 24, 2015, the claimant's son called her at work at 8:30 a.m. The manager and the claimant laughed about him calling. On July 24, 2015, the claimant's son called her at work at about 10:00 a.m. The manager answered the telephone and said "Echo phone" in a manner that the claimant thought was offensive. The claimant thought the manager acted like this when the assistant manager was nearby.

On July 24, 2015, the claimant sent a text to the manager saying she was putting in her two-week notice. The manager responded by texting "whatever." The claimant also put her intentions in writing. She planned her last day of work to be August 7, 2015. She quit because of the manager's behavior on July 24, 2015. The employer did not put the claimant on the schedule after July 30, 2015. The employer thought the claimant would be happy to be finished a week early.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer. Prior to her last day of work the employer discharged the claimant but has not proven misconduct.

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 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(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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer did not appear for the hearing and has not met its burden of proof to show job-related misconduct. The claimant was terminated after giving notice of her resignation. The claimant is eligible to receive benefits until the date of her resignation, August 9, 2015.

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.

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.

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's intention to voluntarily leave work was evidenced by her words and actions. She told the employer that she was leaving in two weeks by writing a text. When an employee quits work because she is dissatisfied with the work environment, her leaving is without good cause attributable to the employer. The claimant left work because she did not like her work environment. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. The claimant is not qualified to receive unemployment insurance benefits after August 9, 2015.

DECISION:

The representative's August 18, 2015 decision (reference 01) is affirmed. The claimant is qualified to receive benefits, provided she is otherwise eligible until August 8, 2015. On August 9, 2015, the claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css