

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DESIRAE L MARKLEY**  
Claimant

**K5 INC**  
Employer

**APPEAL 18A-UI-06405-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/29/18**  
**Claimant: Respondent (4)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the June 4, 2018, (reference 02) unemployment insurance decision that allowed benefits from April 29 until May 12, 2018, based upon a determination that claimant was discharged because she resigned and gave a two-week notice. The parties were properly notified of the hearing. A telephone hearing was held on June 26, 2018. The claimant, Desirae Markley, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, K5, Inc., participated through Brandon Keenan, Owner. Employer's Exhibits 1 through 4 were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time, most recently as a waitress, from March 1, 2018, until April 28, 2018, when she quit. Claimant left a note on April 28, 2018, stating she had an interview the following Monday and was submitting her two-week notice. (Exhibit 3) Claimant was scheduled for work on Monday, but she did not report to her shift. Claimant did not report for any subsequent shifts either. The employer never told claimant that she was fired. Keenan did tell claimant that he would fill her shifts if she was not planning to come to work, but she did not respond to this message.

The administrative record reflects that claimant has received no unemployment benefits since filing a claim with an effective date of April 29, 2018. The administrative record also establishes

that the employer did participate in the fact-finding interview. Keenan personally participated in the fact-finding interview.

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

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

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 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: ...

(27) The claimant left rather than perform the assigned work as instructed.

...

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation.

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). Here, the evidence in the record establishes that claimant submitted a two-week notice and then ceased reporting to work. There is no evidence indicating she had any good cause to quit that is fairly attributable to the employer.

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). Claimant submitted a letter of resignation. While she initially stated that she was giving a two week notice, Keenan provided credible testimony that claimant never came back to work for any of her scheduled shifts. Claimant's separation was without good cause attributable to the employer. Benefits are withheld. Because claimant has not received any benefits since separating from this employer, the issues of overpayment, repayment, and chargeability are moot.

**DECISION:**

The June 4, 2018, (reference 02) unemployment insurance decision is modified in favor of the employer/appellant. Claimant separated from 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. The issues of overpayment, repayment, and chargeability are moot.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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