

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DIANA R KEUMPER**  
Claimant

**APPEAL NO. 07A-UI-08382-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BRIDGES BAY RESORT LLC**  
Employer

**OC: 07/15/07 R: 12**  
**Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Leaving  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 21, 2007, reference 02, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on September 18, 2007. Claimant participated. Employer participated through Aimee Fowler and Anthony Galbraith.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits or if she quit the employment without good cause attributable to the employer.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time housekeeper until June 28, 2007 when she quit. Two days after being chastised for an argument with a coworker, Brandy, claimant said in front of coworkers, "What's taking Brandy so long; is she buying the whole restaurant out to feed her fat ass?" Claimant admitted the statement to employer but did not think there was anything wrong with what she did. Employer was going to continue to allow her to work but would issue written discipline if it happened again. Claimant responded that she did not agree, and said that if that is the way it is going to be then she would quit. She then threw her nametag on desk, clocked out and left before work was done for the day. Claimant recalls Fowler telling her, "If you don't change your attitude by tomorrow you are done" and believed she was fired but did not verify that assumption or report for work again.

The claimant has received unemployment benefits since filing a claim with an effective date of July 15, 2007.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged but voluntarily left her employment without good cause attributable to the employer.

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 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.

"The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. EAB*, 462 N.W.2d 734 (Iowa App. 1990).

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 has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer.

While employer could have established misconduct because of the name-calling and harassment of a coworker, claimant was not fired but merely advised she would be disciplined for future similar conduct. Even if employer had told her to change her attitude or she was done, this would be considered a warning but not a termination of employment. Since claimant assumed she was fired but did not follow up with management personnel, her assumption of having been fired was erroneous and her failure to continue reporting to work was an abandonment of her job. Benefits are denied.

The administrative law judge further concludes claimant has been overpaid benefits.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to

the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The August 21, 2007, reference 02, decision is reversed. The claimant voluntarily left 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 claimant is overpaid benefits in the amount of \$25.00.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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