

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRIEHANA L YOUNG**

Claimant

**APPEAL 19A-UI-08569-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRECIOUS MOMENTS MONTESSORI PRES**

Employer

**OC: 09/22/19**

**Claimant: Appellant (4)**

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

**STATEMENT OF THE CASE:**

On October 31, 2019, the claimant filed an appeal from the October 23, 2019, (reference 01) unemployment insurance decision that denied benefits after the expiration of her resignation notice period on October 5, 2019. The parties were properly notified about the hearing. A telephone hearing was held on November 22, 2019. Claimant participated. Employer participated through owner Diana Pagan.

**ISSUE:**

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 22, 2018. Claimant last worked as a full-time lead teacher. Claimant was separated from employment on September 23, 2019, when she was terminated before her resignation notice period expired.

Employer did not have a non-compete policy in its employee handbook. Employer did not require claimant to sign a non-compete agreement at the beginning of her employment.

On September 23, 2019, claimant gave a written, two-week notice of resignation. Claimant had a job at another daycare. Claimant's last day of scheduled work with this employer was October 4, 2019.

By noon, employer drafted a paper for claimant to sign stating she would not take any employee or clients with her when she left employment. Employer had no evidence that claimant had been persuading any employee or client to leave with her. Claimant declined to sign the agreement. Employer dismissed claimant from employment effective immediately.

Claimant started her new employment on October 7, 2019, and did earn wages with that employer. However, she has since been separated.

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

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment to accept employment elsewhere, but was discharged for no disqualifying reason prior to the intended resignation date.

Iowa Code section 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.

Iowa Code section 96.5(1)a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Code section 96.5(2)a provides:

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

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 disqualification shall continue 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.

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.

In this case, the claimant resigned in order to accept other employment and did perform services for the subsequent employer. Therefore, claimant is allowed benefits based upon the separation from employment and employer's account will not be charged for benefits received after claimant's scheduled intended resignation date of October 4, 2019.

Employer shall be charged for benefits received during the two-week notice period as employer let claimant go in response to her resignation notice. Claimant was under no obligation to sign the proposed non-compete agreement and employer did not establish claimant committed any misconduct that would justify termination. Since the employer terminated the employment relationship in advance of the resignation notice effective date, the claimant is also entitled to benefits from the date of termination until the effective date of the proposed resignation and employer will be charged for benefits during that time period only.

**DECISION:**

The October 23, 2019, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant voluntarily left the employment in order to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer (account number 592079) shall not be charged for benefits after October 5, 2019. Employer discharged claimant prior to her scheduled resignation date of October 4, 2019, for no misconduct. Benefits are allowed during the two weeks ending October 5, 2019, and employer's account can be charged for that time period only.



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Christine A. Louis  
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November 27, 2019  
Decision Dated and Mailed

cal/scn