

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTINA L SWEARINGEN**  
Claimant

**APPEAL NO. 10A-UI-09718-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRESTVIEW ACRES INC**  
Employer

**OC: 05/23/10**  
**Claimant: Respondent (4-R)**

Iowa Code section 96.5(1) – Voluntary Quit  
871 IAC 24.27 – Voluntary Quit of Part-time Employment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 28, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 23, 2010. Claimant Christina Swearingen participated and presented additional testimony through Holly Rice. Steve Hackbarth, Administrator, represented the employer and presented additional testimony through June Vaughn, Jeremiah Thompson, and JoAnne Kos. Exhibits One through Twelve, A and C were received into evidence.

**ISSUE:**

Whether Ms. Swearingen separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Christina Swearingen was employed by Crestview Acres nursing home as a part-time dietary aide from October 16, 2009 until May 29, 2010, when she voluntarily quit due to a personality conflict with coworker and sometimes supervisor June Vaughn. Ms. Vaughn was and is a cook in the employer's dietary department. Ms. Swearingen worked with Ms. Vaughn every other weekend, but did not otherwise work with Ms. Vaughn. Ms. Vaughn was Ms. Swearingen's immediate supervisor on the weekends when they worked together. Toward the end of the employment, Ms. Swearingen requested to switch her weekend shifts so that she did not have to work with Ms. Vaughn. The employer was in the processing of hiring and training a new dietary aide and was willing to grant Ms. Swearingen's request once the new dietary aide was trained.

Ms. Swearingen and Ms. Vaughn sometimes got along and sometimes did not get along. Ms. Swearingen would make self-deprecating remarks about her culinary skills when she was working with Ms. Vaughn. Ms. Vaughn would provide less than tactful directives to Ms. Swearingen and assessments of Ms. Swearingen's abilities. Ms. Swearingen did not take directions well from Ms. Vaughn, from her immediate supervisor, Dietary Manager Jeremiah Thompson, or from other management/supervisory personnel. Mr. Thompson and

Administrator Steve Hackbarth had received complaints from the director of nursing and the assistant director of nursing about Ms. Swearingen's attitude in response concerns they had brought to Ms. Swearingen's attention. Ms. Swearingen was in the habit at announcing her displeasure with her job and routinely balked at directives regardless of the source.

The strained relationship between Ms. Swearingen and Ms. Vaughn reached a climax on May 29, 2010. On that day, neither Ms. Vaughn nor Ms. Swearingen was in a good mood. Ms. Swearingen became upset when Ms. Vaughn left her alone to serve breakfast to the remaining five residents who had not yet eaten while Ms. Vaughn went to the kitchen to prepare the noon meal. Ms. Swearingen showed her displeasure by uttering profanity directed at Ms. Vaughn. Residents were present during the utterance.

When it was time to return meal carts to the kitchen, Ms. Vaughn took one set down in the elevator, returned for two remaining carts, and then took those to the elevator. As the elevator was closing, Ms. Swearingen was outside the elevator and stopped the door from closing while she engaged in a profanity-laced rant directed at Ms. Vaughn. Ms. Vaughn asked Ms. Swearingen repeatedly to get out of the elevator so the door would close and Ms. Vaughn could go on her way. Ms. Swearingen had Ms. Vaughn blocked in the elevator and Ms. Vaughn was in fear that Ms. Swearingen was about to hit her. When Ms. Vaughn raised her hand in self-defense, Ms. Swearingen accused Ms. Vaughn of trying to hit her and uttered additional profanity directed at Ms. Vaughn. Charge Nurse JoAnne Kos came upon the scene and separated the parties. Ms. Kos observed that Ms. Swearingen was the one behaving aggressively toward Ms. Vaughn, was the one speaking with a raised voice and uttering profanity, and observed that Ms. Vaughn calmly and repeatedly asked Ms. Swearingen to get out of the elevator.

After Nurse Kos separated the parties, Ms. Swearingen continued her tirade. Ms. Swearingen made several utterances to multiple staff members indicating that she was quitting the employment. Ms. Swearingen made her way toward the exit. Along the way, Ms. Swearingen emptied her pockets onto the floor. This included throwing her work keys on the floor. Ms. Swearingen then exited the building. Ms. Swearingen left hours before the scheduled end of her shift. Ms. Swearingen telephoned Dietary Department Manager Jeremiah Thompson and told him she quit. Mr. Thompson told Ms. Swearingen that he would speak to Mr. Hackbarth about the matter the following Monday.

During the remainder of the day, Ms. Swearingen and Mr. Thompson exchanged a series of text messages in which Ms. Swearingen asserted she had not quit the employment and Mr. Thompson asserted she had.

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

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

On the other hand, quits prompted by a personality conflict with a coworker or supervisor are presumed to be without good cause attributable to the employer. See 871 IAC 24.25(6) and (22).

The weight of the evidence in the record establishes that Ms. Swearingen voluntarily quit the employment and was not discharged. Ms. Swearingen repeatedly announced her quit to multiple staff members including her immediate supervisor. Ms. Swearingen intentionally threw her work keys and other employer property about as she stormed out. Ms. Swearingen left the workplace well before the end of her shift. All of this would lead a reasonable person to conclude she had voluntarily quit.

The weight of the evidence fails to establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to leave the employment. While Ms. Vaughn may have been disagreeable at times, the weight of the evidence indicates that Ms. Swearingen routinely created interpersonal conflict as she went along. It is ironic that Ms. Swearingen stormed out of the workplace after she had so clearly been the primary aggressor in the event that immediately preceded her departure. The weight of the evidence indicates that Ms. Swearingen voluntarily quit the employment due to her personality conflict with Ms. Vaughn.

Ms. Swearingen's voluntarily quit the part-time employment without good cause attributable to the employer. Ms. Swearingen is disqualified for benefits *based on wages earned from this employment* until 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 employer's account shall not be charged for benefits paid to Ms. Swearingen.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Ms. Swearingen remains eligible for reduced benefits based on other base period employment, provided she meets all other eligibility requirements. This matter will be remanded for redetermination of Ms. Swearingen's benefit eligibility excluding the wages earned from this employment.

**DECISION:**

The Agency representative's June 28, 2010, reference 01, decision is modified as follows. The claimant voluntarily quit the part-time employment without good cause attributable to the employer. The employer's account will not be charged for benefits paid to the claimant. The claimant is disqualified for benefits *based on wages earned from this employment* until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant remains eligible for reduced benefits based on *other* base period employment, provided she meets all other eligibility requirements. This matter will be remanded for redetermination of the claimant's benefit eligibility excluding the wages earned from this employment.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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