

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**LAURA BROWN**  
Claimant

**COVINGTON HEALTH CARE**  
Employer

**APPEAL 17A-UI-11411-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/30/17  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 3, 2017 (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for dishonesty. The parties were properly notified of the hearing. A telephone hearing was held on November 28, 2017. The claimant, Laura Brown, participated. The employer, Covington Health Care, participated through Bethany Eggers, Regional HR Consultant; Christy Batteen, Business Office Manager; Andy Anderson, Maintenance Supervisor; Pam Reitt, Housekeeper Supervisor; and Lucy Oromo, Human Resource Generalist.

**ISSUE:**

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the 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 was employed part-time, most recently as a housekeeping aide, from May 30, 2017, until October 3, 2017, when she quit. The employer uses a timekeeping system that requires each employee to enter a code and then scan her fingerprint to document when she arrives and leaves. Claimant had difficulty using this timekeeping system, so she documented her time on paper instead using time clock adjustment forms. Batteen would receive the time clock adjustment forms and would manually enter them into the system so claimant would get paid. At some point during claimant's employment, Batteen noticed that claimant was filling out her time clock adjustment form in advance. Batteen observed that claimant would write her anticipated time of departure on the form, rather than waiting until she was actually leaving and documenting the exact time. On other occasions, Batteen noticed that claimant had filled out a time clock adjustment form for an entire day of work before that day occurred. Because of this, Batteen began watching claimant carefully to ensure that she was not stealing time from the company.

On September 26, Batteen saw claimant stop working at 2:21 p.m. She observed claimant go to the laundry, collect her personal items, and then sit in the break room and wait until 2:55 p.m., at which point she left the building. Batteen then saw claimant's time clock adjustment form for that day and noted that claimant reported ending work at 2:55 p.m. Batteen refused to enter this time entry into the system, and she reported this discrepancy to claimant's supervisor. On October 1, claimant's immediate supervisor Reitt spoke to her about completing her time clock adjustment forms in advance. She also told claimant that Batteen observed claimant end work at 2:21 p.m. but report ending at 2:55 p.m. on September 26. Claimant had no explanation other than stating that she did not do this.

On October 3, Eggers and Anderson called claimant into the office for a meeting. Eggers and Anderson intended to commence an investigation into claimant's timekeeping from September 26. According to Eggers, the likely outcome of this meeting would have been terminating claimant, but that was not a certainty. Claimant could have offered a valid excuse for the timekeeping discrepancy that might have preserved her employment. However, the meeting never occurred. When claimant was called to the office, she refused to meet with Eggers and Anderson. Claimant said, "If I am going to be getting in trouble, I am going to just leave." Eggers said, "You can't just leave," and claimant replied, "Yeah I can. I quit." Anderson confirmed that claimant said she was quitting.

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

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

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.

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. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events more credible than claimant's version of events. The administrative law judge does not believe that anyone told claimant she was being terminated. Rather, claimant assumed that she was being fired, given that she was being called into a meeting with her second-level supervisor and someone from human resources.

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.

...

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

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). The average person in claimant's situation would not have felt similarly compelled to quit her employment under these circumstances. 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 announced she was quitting and she left the employer's property. She never returned to work. Claimant's decision to quit her employment was without good cause attributable to the employer. Benefits are withheld.

**DECISION:**

The November 3, 2017 (reference 02) unemployment insurance decision is affirmed. 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.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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