

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KERRI E BEASON
Claimant

APPEAL NO: 07A-UI-02031-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLSTEEL INC
Employer

**OC: 01/28/07 R: 04
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 22, 2007, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on March 14, 2007. Claimant participated. Employer participated through Sue McDonald and Allison Beinke.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

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 machine operator/assembler from May 15, 2006 until January 25, 2007 when she quit. On January 24 she left early because she was under the impression her work was done according to lead worker Chet Ayers. She did not get permission from her immediate supervisor Charlie Robinson, production group leader. When she reported on January 25 Robinson questioned her about why she left early the day before and who gave her that permission. She then left her work station and reported to Beinke in the human resources office where at first she said Rick Ryan, lead worker under Robinson had given her the permission, but he had not. She stated she thought Robinson was still yelling at her and said she was leaving. Beinke did not believe Robinson raised his voice towards claimant. Robinson asked her to leave her security badge but neither Beinke nor Robinson told her she was fired. On January 26 she called asking about how to get her check but did not ask about her employment status. She could have continued working under a disciplinary action or warning about walking off the job, which would remain in her file for six months. Employer noted claimant had also walked off the job a couple of weeks before the separation date.

Claimant believed she was fired since Robinson asked for her badge but did not verify her employment status either on January 25 before leaving or on January 26 when she called about her paycheck. Santiago Gonzalez also left early on January 24 and was in the office with

claimant, Robinson and Beinke. Gonzalez followed claimant out the door. He told her the next day he would get his job back if he had a meeting with Robinson and the plant manager but claimant does not believe she can work with Robinson so did not look into getting her job back.

The claimant has received unemployment benefits since filing a claim with an effective date of January 28, 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.

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.

Although claimant's leaving early was with permission of Ayers since she attempted to but could not locate Robinson, employer simply wanted to investigate the matter and there was not even the threat of discipline for leaving early on January 24. Since claimant declined to participate and walked out of the meeting on January 25, employer was reasonable in concluding she had quit. Thus the request for the badges was not a discharge since it came after claimant said she was leaving the meeting. Because claimant did not follow up with management personnel and her assumption of having been fired was erroneous, especially in light of knowing Gonzalez was able to get his job back, claimant's 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 February 22, 2007, reference 01, 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 \$2,075.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs