

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JEANNE L NELSON
Claimant

ALGONA LODGE & SUITES LLC
Employer

APPEAL NO. 21A-UI-18183-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/09/21
Claimant: Appellant (2)**

Iowa Code Section 96.5(1) - Layoff

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 11, 2021, reference 03, decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant voluntarily quit on August 17, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 11, 2021. Claimant participated personally and was represented by attorneys Sabrina Dow and Diane Wilson. Heather Kron represented the employer. Exhibits A through D were received into evidence.

ISSUE:

Whether the claimant was laid off, discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Algona Lodge & Suites, L.L.C., doing business as Brookstone Lodge & Suites Algona, as a part-time front desk clerk. The employment began in March 2020. The claimant last performed work for the employer on August 17, 2020. The claimant usually worked the 3:00 p.m. to 11:00 p.m. shift. The claimant sometimes covered overnight shifts, 11:00 p.m. to 7:00 a.m. Heather Kron, Manager, was the claimant's immediate supervisor. The claimant completed her shift on August 17, 2020. The claimant then notified the employer that she needed to commence a 28-day period of in-patient substance abuse treatment on August 18, 2020. The claimant advises that her probation officer *recommended* that she enter the treatment program, but that the probation officer did not require her participation. The claimant further states that her participation in the treatment program was not court-ordered. At the time the claimant went off work, she did so with the understanding that she was expected to return to work on September 18, 2020. The employer had said nothing to the claimant to indicate her time away from work would be deemed a quit or that the leave would be unexcused. If an employee needed to be absent from a shift, the employer's policy required that the employee call the workplace and also call Ms. Kron directly. The calls were to be made at least two hours prior to the scheduled start of the shift. The claimant was aware of the

absence reporting requirement. The claimant commenced the in-patient treatment on August 18, 2020.

At the time the claimant went off work to enter the treatment program, the posted schedule had the claimant scheduled to work the 3:00 p.m. to 11:00 p.m. shift on August 22, August 23, August 26, August 31, September 2, and September 12, 2020.

On August 20, 2020, Ms. Kron posted a new work schedule that showed the claimant scheduled to work at 3:00 p.m. on September 18, 2020.

Though the employer knew the claimant was participating in a 28-day substance abuse treatment program, the employer deemed the claimant a no-call/no-show for each of the shifts between August 22 and September 2, 2020. On September 3, 2020, Ms. Kron deemed the employment terminated and removed the claimant from the posted schedule.

The claimant was released from the treatment program early, on September 11, 2020. The claimant did not immediately return to the employment.

On September 17, 2020, the claimant reported to the workplace under the erroneous belief that she was scheduled to work at 3:00 p.m. that day. The claimant was not scheduled to work that day. When the claimant arrived, she learned that the another employee was set to work the 3:00 p.m. to 11:00 p.m. shift. While the claimant was at the workplace, the claimant observed that she was not on the work schedule. The claimant attempted to call Ms. Kron. Ms. Kron was detained by another matter and did not answer the call. Ms. Kron had the claimant's number programed into her phone and knew the call was from the claimant. At 3:00 p.m. on September 17, the claimant sent a text message to Ms. Kron: "Hey...thought I was going to work today...nobody bothered to call me and tell me I am not [sic] longer working here...I'm going to need a reason please...I love my job...sadface..." Ms. Kron received the message, but did not respond to it.

At 4:14 p.m. on September 18, 2020, the claimant sent another text message to Ms. Kron: "Hi Heather, if you could[,] please call me at your earliest convenience that would be great thank you." On that day, Ms. Kron called the claimant. The line rang once and then routed Ms. Kron's call to voicemail. Ms. Kron does not recall whether she left a message.

On September 30, 2020, the claimant sent an email message to the front desk at the hotel:

Hi! Jeanne here...was wondering why I was taken of the schedule...am I fired? If so, what is the reason. Otherwise, I'd like to get back to work asap and I love that job, so please...hire me back!
Sincerely,
Jeanne Nelson

Ms. Kron was unaware of the message directed to the front desk. No one from the employer responded to the email message. On October 14, 2020, the claimant re-sent her email, but no one responded.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of labor-saving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 Iowa Administrative Code rule 871-24.25.

Iowa Admin. Code r. 871-24.22(2)(j)(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2).

The weight of the evidence in the record establishes that the employer failed to reemploy the claimant at the end of a leave period that the claimant reasonably believed had been approved by the employer. The claimant was laid off. The layoff neither disqualified the claimant for benefits nor relieved the employer's account of liability for benefits. Contract Iowa Code section

96.5(1) (regarding voluntary quit without good cause) and 96.5(2)(a) (regarding discharge for misconduct in connection with the employment). The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The August 11, 2021, reference 03, decision is reversed. The claimant was laid off effective September 18, 2020. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.



James E. Timberland
Administrative Law Judge

November 29, 2021
Decision Dated and Mailed

jet/kmj