

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**EMILY MOREY**  
Claimant

**FUNGU BROTHERS LLC**  
Employer

**APPEAL 21A-UI-14946-ED-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/14/21**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the June 29, 2021 (reference 02) unemployment insurance decision that denied benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on August 25, 2021. The claimant, Emily Morey, participated personally. The employer, Fungu Brothers LLC, participated through witness, Rick Bianci. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a waitress and lead server beginning June 2017. Her last day physically worked on the job was March 15, 2020. Claimant's direct supervisor was Rick Bianci.

On March 17, 2020, the employer closed down due to the Governor's emergency proclamation during the pandemic. The employer re-opened 90 days after March 17, 2020. On March 17, 2020, the claimant sent a text message to Rick Bianci stating she couldn't wait for the restaurant to re-open as she had bills to pay and that she was going to have to leave to look for a new job. Mr. Bianci responded stating that he completely understood and that she had to do what was best for her family. The claimant did not attempt to return to work. The employer did not contact the claimant to return to work. The claimant received pandemic unemployment assistance benefits (PUA). The claimant's PUA benefits have been exhausted.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

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 quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case claimant tendered her resignation via text message to Mr. Bianci when the business closed down due to Covid-19.

It is clear that claimant approached Mr. Bianci first and voluntarily submitted her written resignation on March 17, 2020. "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). A voluntary quit is not attributable to the employer if caused by claimant wishing to look for other employment. *Wolf's v. IESC*, 244 Iowa 999, 59 N.W.2d 216 (1953).

Iowa Admin. Code r. 871-24.25(37) 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 § 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 § 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:

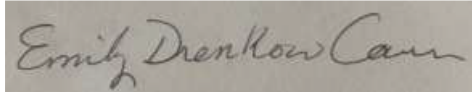
(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

Claimant tendered written notice of intent to resign which was accepted effective March 17, 2020 by the employer. Claimant was not forced or pressured to tender her resignation by her employer.

While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

**DECISION:**

The June 29, 2021, (reference 02) unemployment insurance decision is affirmed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld in regards to this employer until such time as claimant is deemed eligible.

A rectangular box containing a handwritten signature in cursive script that reads "Emily Drenkow Carr".

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Emily Drenkow Carr  
Administrative Law Judge

August 31, 2021  
Decision Dated and Mailed

ed/mh