

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**AMBER D BARTH**  
Claimant

**THE OUTLET INC**  
Employer

**APPEAL 20A-UI-09938-HP-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (3)**

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

**STATEMENT OF THE CASE:**

Claimant Amber Barth filed an appeal from an August 19, 2020 (reference 05) unemployment insurance decision that denied benefits for voluntarily quitting her work with The Outlet Inc. (“The Outlet”). The parties were properly notified of the hearing. A telephone hearing was held on September 29, 2020. Barth appeared and testified. Kenneth Woodall testified on her behalf. Deb Snyder and Steven Lyle appeared and testified on behalf of The Outlet. I took administrative notice of the claimant’s unemployment insurance benefits records maintained by Iowa Workforce Development.

**ISSUE:**

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

**FINDINGS OF FACT:**

On April 7, 2019, Barth commenced full-time employment as a cashier with The Outlet. Steven Lyle was her immediate supervisor. Lyle reported to Schnyder.

Barth has COPD and asthma. March 26, 2020 was the last day she performed services for The Outlet. On March 27, 2020, Barth called Schnyder and told her she wanted to self-quarantine for two weeks because of her personal health conditions and because her daughter who lives with her was having a baby. Schnyder approved Barth’s request and told her when she returned to work she would be promoted to assistant manager. Barth testified her personal physician had recommended she not work. Barth did not provide The Outlet with a note excusing her from work.

On April 13, 2020, Barth called Schnyder and reported she still did not feel comfortable coming back to work, but stated she would return on May 1, 2020. Schnyder approved Barth’s request for additional unpaid leave.

Schnyder and Lyle testified Barth was scheduled to work on May 1, 2020, May 2, 2020, and May 3, 2020. Schnyder and Lyle testified they both left voicemail messages and text messages

for Barth the week before May 1, 2020, but they did not hear back from Barth. Barth testified she was having telephone problems and that she did not receive the messages.

Barth reported she is a smoker and she purchases her cigarettes from The Outlet. She reported she was in the store often and saw Lyle, but she did not speak to him about returning to work. Lyle testified Barth did not come into the store the week before May 1, 2020, when he had tried to reach her.

Barth testified she spoke with Schnyder on April 30, 2020 and told her she would not be returning to work until the Governor released the restrictions. Barth reported Schnyder told her when she returned to work she would be promoted to assistant manager. Schnyder denies speaking with Barth on April 30, 2020 and testified she discussed the promotion with Barth on March 27, 2020. Barth's boyfriend, Woodall, who worked with her at The Outlet, testified Barth called Schnyder on April 30, 2020. Barth never provided Schnyder or Lyle with a medical release excusing her from working due to her COPD or asthma.

The Outlet has a policy that if employees are a no call, no show for three days, they are discharged. The policy is contained in the employee handbook. Barth acknowledged she reviewed a copy of the employee handbook and she was familiar with the policy.

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

Iowa Code section 96.5(1) provides an individual "shall be disqualified for benefits, regardless of the source of the individual's wage credits: . . . If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department." The Iowa Supreme Court has held a "voluntary quit" means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer." *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires "an intention to terminate the employment relationship accompanied by an overt act carrying out the intent." *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). "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 claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016).

871 Iowa Administrative Code 24.25(4), (20), and (23) provide:

**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 following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer: . . . .

**24.25(4)** The claimant was absent for three days without giving notice to employer in violation of company rule.

**24.25(20)** The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

**24.25(23)** The claimant left voluntarily due to family responsibilities or serious family needs.

Barth testified she spoke with Schnyder on April 30, 2020, to report she was going to continue to self-quarantine. Barth's boyfriend, Woodall, testified he listened to her make the call. Schnyder testified she did not speak with Barth on April 30, 2020, and reported she and Lyle had tried to call and text Barth several times during the week before May 1, 2020, when she was scheduled to work. This differing testimony creates an issue of credibility.

During the hearing I assessed the credibility of the witnesses by considering whether their testimony was reasonable and consistent with other evidence I believe, whether they had made inconsistent statements, their "appearance, conduct, memory and knowledge of the facts," and their interest in the case. State v. Frake, 450 N.W.2d 817, 819 (Iowa 1990). Barth has an interest in receiving unemployment benefits and has an interest in the outcome of this case. Barth's boyfriend, Woodall, also has an interest in supporting his girlfriend. Schnyder and Lyle also have an interest in this case because they work for The Outlet. Barth's and Woodall's testimony is not reasonable and consistent with the other evidence I believe. I find the testimony of Schnyder and Lyle reasonable and consistent with the other evidence I believe.

Lyle was not initially listed as a witness. Schnyder asked if he could be added as a witness at the end of the hearing. Lyle had not listened to the testimony during the hearing. His testimony was consistent with Schnyder's testimony. Lyle reported he and Schnyder had attempted to call and text Barth several times the week before her scheduled shift on May 1, 2020, and they left messages for her, but never heard back from her. Barth testified she is in The Outlet often to buy cigarettes and that she was in the store and saw Lyle, but he did not ask her when she was coming back to work. Lyle testified Barth was not in The Outlet when he and Schnyder were trying to reach her the week before May 1, 2020. Barth also could not recall if Schnyder allegedly called her on April 30, 2020, or if she called Schnyder. Schnyder offered Barth a promotion and granted her two requests for leave. Barth never provided The Outlet with a medical excuse, excusing her from working. I find Barth left for compelling personal reasons and that her period of absence was more than ten days. I also find that she was scheduled to work on May 1, 2020, May 2, 2020, and May 3, 2020, and that she failed to call or show up for work on those days, in violation of a company rule. Barth voluntarily left her employment without good cause attributable to The Outlet. Benefits are denied.

## **DECISION:**

### **Regular Unemployment Insurance Benefits Under State Law**

The August 19, 2020 (reference 05) unemployment insurance decision denying unemployment insurance benefits is affirmed, as modified. Claimant voluntarily quit the claimant's employment with the employer on May 3, 2020. Unemployment insurance benefits are denied until the claimant has worked in and earned wages for insured work equal to ten times the claimant's weekly benefit amount after the claimant's separation date, and provided the claimant is otherwise eligible.

### **Pandemic Unemployment Assistance ("PUA") Under the Federal CARES Act**

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance ("PUA") that may provide up to 39 weeks of unemployment

benefits. An individual receiving PUA benefits may also receive an additional \$600 weekly benefit amount under the Federal Pandemic Unemployment Compensation (“FPUC”) program if the individual is eligible for PUA benefits for the week claimed. The FPUC additional \$600 payment per week ended as of July 25th in Iowa. This means the \$600 weekly additional benefit stopped and at this time, no extension or change to the program has been made by Congress at this time. This does mean that you will see a corresponding decrease in your weekly benefit amount. The FPUC payments are not a state benefit and Iowa is unable to make any changes to the availability of this benefit. If a change takes place to this benefit in the future, IWD will share on the IWD website and social media. This decision does not address whether the claimant is eligible for PUA. If the claimant wishes to receive PUA benefits, the claimant must apply for PUA, as noted in the instructions provided in the “Note to Claimant” below:

**Note to Claimant:** If this decision determines you are not eligible for regular unemployment insurance benefits and you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (“PUA”). **You will need to apply for PUA to determine your eligibility under the program. Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.** This decision denies benefits. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.



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September 30, 2020  
Decision Dated and Mailed

hlp/sam