

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROZELLA J MASEK
Claimant

APPEAL 18A-UI-01106-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BERTCH CABINET MFG INC
Employer

**OC: 12/24/17
Claimant: Appellant (4)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 17, 2018, (reference 02) unemployment insurance decision that denied benefits based on her voluntary quit. The parties were properly notified of the hearing. The appellant did not respond at the telephone number provided because, according to information provided by the employer, she died on February 13, 2018. Based on the administrative file, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a parts sander from March 8, 2004, until this employment ended on January 2, 2018, when she voluntarily quit.

On December 18, 2017 the claimant notified the employer of her intent to retire, with her last day of work being January 2, 2018. In December 2017, claimant and her coworkers were notified they were going to be temporarily laid off the last week in December. Claimant was temporarily laid off the week of December 24, 2017. Claimant filed an original claim effective December 24, 2017 and also filed her weekly continued claim for that week. On January 2, 2018, claimant was recalled and returned to work. The employer does not dispute that claimant was temporarily laid off due to lack of work for the week of December 24, 2017 and that she returned to work on January 2, 2018, as previously agreed upon, before retiring.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's temporary layoff the week of December 24, 2017 was due to lack of work and therefore attributable to the

employer, but her separation from the employment effective the week of December 31, 2017 was without good cause attributable to the employer.

Iowa Code section 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.

Iowa Admin. Code r. 871-24.1(113)a provides:

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 laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

Claimant was temporarily laid off due to lack of work the week of December 24, 2017. Therefore, the temporary separation was attributable to a lack of work by the employer. Benefits are allowed for the week of December 24, 2017, provided claimant is otherwise eligible. The following week claimant returned to work for one day, January 2, 2018, before retiring.

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:

(24) The claimant left employment to accept retirement when such claimant could have continued working.

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). 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 ended her employment with the employer on January 2, 2018 to retire. While claimant's leaving 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 are denied beginning the week of December 31, 2017.

Since the filing of her appeal, the claimant has passed away. The claimant's estate is encouraged to contact the Unemployment Insurance Service Center about collecting any benefits payable to the estate on her behalf.

DECISION:

The January 17, 2018, (reference 02) unemployment insurance decision is modified in favor of the claimant/appellant. The claimant was temporarily laid off due to lack of work the week of December 24, 2017. Benefits are allowed for the week of December 24, 2017, provided the claimant is otherwise eligible. Any benefits claimed and withheld on this basis, for the week of December 24, 2017, shall be paid. The claimant then voluntarily left her employment without good cause attributable to the employer effective the week beginning December 31, 2017 when she retired. Benefits are withheld beginning December 31, 2017 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.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs