

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DAWN M ABERNATHEY
Claimant

DIAMOND JO WORTH LLC
Employer

APPEAL 14A-UI-09778-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/24/14
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 10, 2014 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 16, 2014. Claimant participated along with her treating social worker, Allison Fox, LMSW. Employer participated through Nancy Vine, Director of Human Resources, and was represented by Susan Chemelovsky of Equifax.

ISSUE:

Did the claimant voluntarily quit her employment without good cause attributable to the 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 dual rate supervisor beginning on November 4, 2010 through August 1, 2014 when she voluntarily quit. The claimant worked as a dealer from time of hire until she was promoted to table games supervisor on January 23, 2014. When promoted to a supervisory position the claimant was not given any training on how to effectively manage the employees under her supervision. She was given a verbal warning on March 15 for using unprofessional conduct on the gaming floor when she used inappropriate tone and volume when speaking to an employee. She was given another verbal warning on March 30 for signing a closure sheet on a table game where the dollar count was over by \$500.00. She was given a written warning on April 20 for suggesting that a team member break policy and creating a hostile and unfriendly work environment. She was disciplined on May 3 for chewing gum on the gaming floor. The claimant continued to demonstrate inappropriate behavior including yelling at and arguing with employees while becoming overly emotional. Based on her ongoing disciplinary issues and the claimant's inability to master the supervisory duties, the employer notified her that she was going to be demoted to a dual rate supervisor. That meant there would be times when the claimant just worked as a dealer but other times when she would perform her supervisor duties as the employer worked with her to improve her skills.

The claimant left work upset and called in absent on May 9 when she went off work on a leave under the Family Medical Leave Act (FMLA). She sought treatment in July from a mental health counselor, Allison Fox. Ms. Fox opined that as of August 1 the claimant was able to return to work. On July 15 Ms. Vine had sent the claimant a letter telling her that she would exhaust her FMLA leave on August 1. In the same letter Ms. Vine told the claimant that if she needed additional leave she could apply for an unpaid leave of absence which the employer would consider granting. The claimant did not seek any additional leave and no medical provider indicated she would not work after August 1. The claimant had homicidal feeling toward some of her coworkers and suicidal feeling for herself on July 31, so she wrote the employer an email and resigned.

No medical provider offers the opinion that the claimant's mental condition was caused by her work. The claimant simply was not a good fit for the supervisor position. Her demotion was disciplinary in nature. The expectations for the claimant as a table game supervisor were no different from the expectations for any other supervisor. The claimant admits she was not always speaking to her coworkers in an appropriate manner. There is no evidence to support the claimant's contention that the employer and her coworkers were ganging up on her or that she was treated in a different manner. The claimant's own admission was that her problems did not begin until she was promoted to a supervisor position. Continued work was available for the claimant if she had not quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.25(6), (21), (27), (28) 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:

- (6) The claimant left as a result of an inability to work with other employees.
- (21) The claimant left because of dissatisfaction with the work environment.
- (27) The claimant left rather than perform the assigned work as instructed.
- (28) The claimant left after being reprimanded.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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 evidence does not support a conclusion that the claimant was being subjected to a hostile or intolerable work environment. The expectations of her were the same for any supervisor. The demotion was disciplinary in manner because of the way the claimant spoke to and treated those who worked for her. Under these circumstances the disciplinary demotion does not amount to a change in her contract of hire. While claimant's decision to quit may have been based upon good personal reasons, it was not a good cause reason attributable to the employer for leaving the employment. Benefits must be denied.

DECISION:

The September 10, 2014 (reference 01) decision is affirmed. The claimant voluntarily left her 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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