

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRISTIE F TRIPP
Claimant

FLOORCRAFTERS INC
Employer

APPEAL 23A-UI-07769-PT-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/09/23
Claimant: Respondent (3)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Admin. Code r. 871-24.25(38) – Discharge Prior to Effective Date of Resignation
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-finding Interview

STATEMENT OF THE CASE:

The employer, Floorcrafters Inc., filed an appeal from the Iowa Workforce Development (IWD) August 1, 2023 (reference 01) unemployment insurance (UI) decision. The decision allowed claimant, Kristie Tripp, regular UI benefits from July 9, 2023 through July 22, 2023, because IWD concluded Ms. Tripp resigned effective July 20, 2023, and because of her resignation, the employer terminated her employment on July 13, 2023. On August 11, 2023, the Iowa Department of Inspections, Appeals, and Licensing, UI Appeals Bureau mailed a notice of hearing to the parties for a telephone hearing scheduled for August 24, 2023.

The undersigned administrative law judge held a telephone hearing on August 24, 2023. The employer participated through Company President Jon Heyland. The claimant, Ms. Tripp, participated personally. The undersigned administrative law judge took official notice of the administrative record.

ISSUES:

Whether the claimant voluntarily quit her employment with good cause attributable to the employer.
Whether the claimant was discharged from employment prior to the effective date of her resignation for any disqualifying reason.
Whether the claimant was overpaid benefits and, if so, whether the claimant should repay benefits.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant began working for the employer in March 2015. Claimant worked as a full-time sales manager. Her employment ended on July 13, 2023.

On July 3, 2023, claimant gave the company president a written notice that she intended to resign in two weeks because she had accepted a new job with a different employer. In the letter, claimant stated that she could continue working longer than two weeks if the employer needed more than a two-week notice. The company president was upset when he learned of claimant's resignation and he told claimant that he needed a couple days to process the information.

On July 6, 2023, claimant met with the company president and the parties agreed that claimant would continue working for the employer through July 20, 2023, and that claimant's resignation would be effective July 21, 2023. Claimant was scheduled to begin her new job on July 24, 2023.

At approximately 6:00 a.m. on July 14, 2023, the company president texted claimant stating, "I'm going to have yesterday be your last day. I think it would be best." The company president instructed claimant to come to the employer's premises to drop off her key and that her employment was terminated effective immediately. After her separation from Floorcrafters Inc., claimant performed services and secured wages with the subsequent employer.

Claimant filed weekly UI claims for two weeks between July 9 and July 22, 2023. IWD paid claimant regular (state) UI benefits in the total gross amount of \$268.00 for the one week ending July 15, 2023. The employer participated in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, 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 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).

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). The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

Iowa Code section 96.5(1)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that claimant did voluntarily quit her employment with Floorcrafters Inc. effective July 20, 2023, for the sole purpose of taking other employment. Claimant has worked for the other employer and secured wages with the subsequent employer. Claimant's quit of her employment with Floorcrafters Inc. is not disqualifying from the receipt of unemployment benefits, if she is otherwise eligible. The employer, Floorcrafters Inc. shall not be charged for any unemployment benefits received by claimant after her effective resignation date of July 20, 2023.

Next I will analyze whether claimant is eligible for benefits from the date the employer ended her employment to the effective date of her resignation.

Iowa Admin. Code r. 871-24.25(38) 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:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy. However, if the employer fails to prove job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

Because the discharge was simply a business decision in response to a resignation notice, the employer has not established disqualifying misconduct. Since the employer terminated the employment relationship in advance of the resignation notice effective date, the claimant is eligible for UI benefits from July 9, 2023, the effective date of her UI claim.

Because claimant's separation was not disqualifying, the issues of overpayment, repayment, and charges are moot.

DECISION:

The August 1, 2023, (reference 01) unemployment insurance decision is modified in favor of the respondent, Kristie Tripp. The claimant voluntarily left the employment effective July 20, 2023, in order to accept other employment. Claimant was then discharged prior to the effective date of her resignation for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

The employer (account number 157572-000) may be charged for benefits received during the two weeks between July 9, 2023 and July 22, 2023. The account of the employer shall not be charged for benefits received after July 23, 2023. The issues of overpayment, repayment, and charges are moot.



Patrick B. Thomas
Administrative Law Judge

August 29, 2023
Decision Dated and Mailed

PBT/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.