

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

BETTINA K CLAUSEN
Claimant

APPEAL NO. 13A-UI-02224-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AT&T MOBILITY SERVICES LLC
Employer

**OC: 01/20/13
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.5-1 – Voluntary Quit
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 18, 2013, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 20, 2013. Claimant participated personally. Employer participated by Ted Valencia, Hearing Representative TALX UC Express with witnesses Jennifer Webb, Team Manager; Susan Collins, Area Manager; and Emily Hunter, Attendance Manager. Exhibits One and A were admitted into evidence.

ISSUES:

The issues in this matter are whether claimant was discharged for misconduct or whether claimant quit for good cause attributable to employer in lieu of discharge. The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 13, 2013.

Claimant resigned on January 28, 2013. Claimant was given the chance to resign or face discharge. Claimant accumulated 61.25 absentee points on an eight point policy. Claimant would have faced discharge but for the involuntary resignation. Claimant quit because she wanted to be eligible for rehire. Employer gave claimant multiple options including a quit in lieu of discharge. Claimant chose to resign rather than face an option of discharge.

Claimant was not able to work full time until March 3, 2013.

REASONING AND CONCLUSIONS OF LAW:

Claimant quit in lieu of facing discharge from employment. This is not a disqualifiable event because claimant involuntarily separated from employment to avoid the discharge. The rules

specifically state that benefits shall be allowed when a person quits in lieu of discharge. It is not a true voluntary quit nor is it a discharge. It is an involuntary quit, a different type of separation not disqualifying under Iowa Code section 96.5-1 as a voluntary quit nor under 96.5-2-a as a discharge for misconduct.

While there is a difference in opinion on this issue within the appeals bureau, the plain reading of the rule has but one logical conclusion. There is no language that shifts the issue and burden of proof from a quit to a misconduct issue. Nor do the rules of statutory construction allow for a misconduct analysis under this rule. Tradition within the appeals bureau recently has been to shift this type of case to the issue of misconduct. This approach gives the employer a second bite at the apple, so to speak. The undersigned has always disagreed with this erroneous interpretation.

The rule specifically states that quitting under such duress is a quit for good cause attributable to employer. We as administrative law judges are bound by the enabling statutes and rules. Absent a specific rule that shifts this issue to misconduct, this is a non disqualifying event as shown by the rule. Employers receive significant legal benefit where an employee chooses to quit rather than face discharge.

When first introduced, the rule history was explained, that qualification is automatic under this circumstance because of the benefit conferred on the employer by a voluntary resignation. That history has been ignored far too long. The department's fact finding ANDS decision, which has remained static, still reflects the original intent of the rule. The ANDS form finds that a quit when faced with a quit or discharge scenario is a quit with good cause attributable to the employer.

The administrative law judge holds that claimant was not discharged for an act of misconduct and was not a voluntary quit and, as such, is not disqualified for the receipt of unemployment insurance benefits. This is a quit for good cause attributable to employer based on the administrative rule.

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.

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

Researching rule history is cumbersome and tedious for a complete history. In the administrative code (<http://www.legis.state.ia.us/IAC.html>) at the end of every chapter (PDF version) there is a history for all the rules in the chapter (not by individual rule but by chapter). In the case of 871 IAC chapter 24 the history from that chapter is copied and given below. One must then look at the individual amendment filings to see which rules(s) were changed in that filing by using the published date and looking at the administrative bulletin

(<http://www.legis.state.ia.us/asp/BulletinSupplement/bulletinListing.aspx>) for the appropriate published dates. (The bulletins are electronically archived only back to 1997. Published bulletins prior to 1997 are available in paper form in the state law library. If you go too far back there are no bulletins but merely fillings by date.) (Credit goes to Deputy Workers' Compensation Commissioner Clair Cramer for outlining this procedure.) The undersigned has not yet completed this research but sets forth the procedure for future reference and appellate review:

“This rule is intended to implement Iowa Code section 96.5(10).
[Filed 12/29/55; amended 12/29/58, 6/23/59, 12/4/59, 11/22/61, 4/21/72]
[Filed 10/28/75, Notice 9/22/75—published 11/17/75, effective 12/23/75]
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¹ See rule 345—4.50(96)

² Effective date of 24.26(14) and 24.26(15) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 8, 1999.”

Claimant was not able and available for work until March 3, 2013. Benefits shall be withheld until March 3, 2013.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

DECISION:

The decision of the representative dated February 18, 2013, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements. Claimant is not able and available for benefits effective January 20, 2013 through March 2, 2013. Claimant is able and available for work effective March 3, 2013.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css