

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VALERIE L TWOHIG
Claimant

APPEAL NO: 13A-UI-12418-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 10/13/13
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(28) – Reprimand
871 IAC 24.25(38) – Resignation/Discharge

STATEMENT OF THE CASE:

The claimant appealed a department decision dated November 4, 2013, reference 01, that held she resigned effective October 30, 2013 with two-week notice to work, but was discharged by the employer on October 16, which allowed benefits from the resignation date to October 26. A telephone hearing was held on November 27, 2013. The claimant participated. Robert Winn, Representative; Deb Schillinger, Team Director; and Jennifer Swindler, Clinical Director, participated for the employer. Claimant Exhibit A and Employer Exhibit 1 were received as evidence.

ISSUES:

The issue is whether claimant voluntarily quit without good cause.

The issue is whether the claimant is eligible for benefits from the employment separation date to the proposed resignation date.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant worked for the employer as a full-time nurse case manager from October 29, 2012 to October 16, 2013. The employer presented claimant with a final written warning on October 16. The claimant disagreed with it. She responded with a two-week written notice she was resigning from employment. The employer elected to accept the resignation effectively immediately, rather than allow her to work to the notice date of October 30. The employer was concerned claimant would not comply with the final warning directives because she disagreed with the warning.

REASONING AND CONCLUSIONS OF LAW:

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 24.25(28) and (38) 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 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:

(28) The claimant left after being reprimanded.

(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 administrative law judge concludes claimant resigned on October 16, 2013 that is a voluntarily quit of employment without good cause attributable to the employer, but she was discharged on that date that makes her eligible for benefits to the proposed October 30 resignation date.

While the employer terminated claimant because it had a concern about how claimant would perform her job during the notice period, claimant signed for the warning and there is no additional act of misconduct to deny benefits for the notice period. In effect the employer accepted the resignation as a voluntary quit so there is no discharge issue on October 16. You cannot discharge someone who has quit once you accept the resignation.

A resignation is a voluntary quit without good cause attributable to the employer. However, the employer discharged the claimant that denied her the opportunity to work the two-week notice period. The claimant is allowed benefits for the two weeks, but is denied thereafter, due to the effective date of the resignation.

DECISION:

The department decision dated November 4, 2013, reference 01, is affirmed. The claimant voluntarily quit without good cause attributable to the employer due to resignation in response to a reprimand. Claimant was discharged on October 16 in advance of her two-week notice October 30 date that entitles her to receive benefits for that period. Benefits are then denied

until the claimant has worked in and is paid wages for insured work, equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css