

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONDA R CLAYBURN
Claimant

APPEAL NO. 08A-UI-01508-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST ACADEMY LLC
MIDWEST ACADEMY
Employer

OC: 01/13/08 R: 04
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

Midwest Academy filed a timely appeal from the February 7, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 27, 2008. Claimant Ronda Clayburn participated. Mary Otu represented the employer and presented testimony through Tiffany Kahn, Katie Thompson and Cory McCandless. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

ISSUES:

Whether the claimant voluntarily quit or was discharged from the employment. The administrative law judge concludes the claimant voluntarily quit.

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ronda Clayburn was employed by Midwest Academy as a full-time Girls Dorm Parent from May 5, 2005 until January 15, 2008. Ms. Clayburn's immediate supervisor was Katie Thompson, Academy Staff Supervisor. Ms. Thompson had become Ms. Clayburn's supervisor in mid-December 2007, but worked at Midwest Academy in another capacity before then. Ms. Clayburn believed she had a good working relationship with Ms. Thompson. Ms. Clayburn had two daughters who had also worked at Midwest Academy. One daughter had separated from the employment well before Ms. Clayburn's separation from the employment. The second daughter was discharged by the employer on January 15, 2008.

On January 15, 2008, Ms. Clayburn received a call from the daughter that was still employed by Midwest Academy. The daughter was very upset and advised Ms. Clayburn that she had just been discharged. The daughter asked Ms. Clayburn to pick her up from the workplace. When

Ms. Clayburn got off the phone with her daughter, she telephoned Katie Thompson. Ms. Clayburn left a voice message for Ms. Thompson, asking for a return call. Ms. Thompson returned Ms. Clayburn's call within five to ten minutes. Ms. Clayburn asked Ms. Thompson what was going on with her daughter's employment. Ms. Thompson indicated that she was not at liberty to discuss personnel issues involving other staff, including the daughter. Ms. Clayburn then asserted that the employer's decision to discharge the daughter was a personal attack on Ms. Clayburn. Ms. Clayburn asserted that the employer was "trying to run her out of town." Ms. Clayburn asked if she was next on the list. Ms. Clayburn asked if she should bother coming in for work. Ms. Thompson told Ms. Clayburn that she did have a matter that she needed to discuss with Ms. Clayburn. Ms. Thompson shared with Ms. Clayburn that she had received two complaints regarding Ms. Clayburn and that she needed to discuss those with Ms. Clayburn in person. Ms. Thompson was still in the process of investigating the complaints she had received from a staff member and from a student/resident. The employer had received prior similar complaints from staff and students about Ms. Clayburn being disrespectful to staff or students. Ms. Clayburn wanted Ms. Thompson to discuss the complaints with her on the phone. Ms. Thompson reiterated that she needed to discuss the matters in person when Ms. Clayburn appeared for her next shift. Ms. Clayburn said she felt like she was being targeted. Ms. Clayburn told Ms. Thompson that if the employer was planning to discharge her, she wanted Ms. Thompson to save her the trip to the workplace. Ms. Thompson reiterated that she needed to discuss the matters with Ms. Clayburn in person when she appeared for her next shift. At this point, Ms. Clayburn said, "Forget it, fuck all of you." Ms. Clayburn then terminated the call. Ms. Thompson concluded that Ms. Clayburn had just quit the employment.

Ms. Thompson had initiated the telephone call to Ms. Clayburn from the office she shared with her supervisor. The supervisor and another staff member were present in the room at the time of the call and could hear Ms. Thompson's end of the conversation. When Ms. Clayburn terminated the call, Ms. Thompson discussed with her colleagues her belief that Ms. Clayburn had just quit the employment. At no time during or after the phone call did Ms. Thompson indicate to Mr. Clayburn or anyone else that Ms. Clayburn was discharged from the employment.

When Ms. Clayburn terminated the call with Ms. Thompson, she telephoned owner Benjamin Trane and asserted she had just been discharged from the employment. Mr. Trane had not yet spoken to Ms. Thompson.

Later the same day, Ms. Clayburn appeared at the workplace to clean out her office.

Ms. Clayburn established a claim for unemployment insurance benefits that was deemed effective January 13, 2008. To date, Ms. Clayburn has received benefits totaling \$1,946.00 in connection with the claim.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether Ms. Clayburn quit or was discharged from the employment. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

The greater weight of the evidence in the record establishes that Ms. Clayburn voluntarily quit and was not discharged from the employment. The evidence indicates that Ms. Clayburn was upset about her daughter's discharge at the time she spoke with Ms. Thompson on January 15 and that this influenced her interaction with Ms. Thompson. The evidence indicates that Ms. Clayburn was upset by Ms. Thompson's refusal to discuss a personnel issue concerning another employee, even if the employee was Ms. Clayburn's daughter. Ms. Thompson's decision to not discuss the matter with Ms. Clayburn was reasonable. The evidence indicates that Ms. Clayburn erroneously perceived the daughter's discharge as a personal slight or attack on Ms. Clayburn. Ms. Clayburn became further upset when Ms. Thompson indicated she had a personnel matter concerning Ms. Clayburn's employment that she needed to discuss with Ms. Clayburn. The evidence indicates that Ms. Thompson repeatedly iterated that she needed to discuss the matter with Ms. Clayburn in person when she appeared for her next shift. The evidence indicates that Ms. Clayburn uttered remarks that would lead a reasonable person to believe she had quit the employment. The evidence indicates that Ms. Clayburn erroneously jumped to the conclusion that she was about to be discharged from the employment. Ms. Thompson's comments during the phone call would not have prompted a reasonable person to conclude that Ms. Thompson was discharging Ms. Clayburn during the phone call or planned to discharge Ms. Clayburn as soon as she appeared for her next shift. While the evidence establishes how upset Ms. Clayburn was during the call with Ms. Thompson, the evidence indicates that Ms. Thompson remained reasonable and professional during the call. The evidence indicates that Ms. Thompson in no way conveyed to Ms. Clayburn that she was discharged from the employment. The evidence indicates that Ms. Thompson documented the call as soon as it ended. Ms. Clayburn voluntarily quit. She was not discharged from the employment.

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.

Quits prompted by dissatisfaction with the work environment, a personality conflict with a supervisor, and/or in response to a reprimand, are presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21)(22) and (28). The weight of the evidence indicates that Ms. Clayburn voluntarily quit the employment for all three reasons, none of which constituted good cause attributable to the employer.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Clayburn voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Clayburn is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Clayburn.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because Ms. Clayburn has received benefits for which she has been deemed ineligible, those benefits constitute an overpayment that Ms. Clayburn must repay to Iowa Workforce Development. Ms. Clayburn is overpaid \$1,946.00.

DECISION:

The Agency representative's February 7, 2008, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged. The claimant is overpaid \$1,946.00.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs