

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTA L BURGETT
Claimant

APPEAL NO. 11O-UI-00300-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

OC: 05/02/10
Claimant: Respondent (4-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Mosaic, filed an appeal from a decision dated September 28, 2010, reference 02. The decision allowed benefits to the claimant, Krista Burgett. After due notice was issued a hearing was held by telephone conference call on February 16, 2011. The claimant participated on her own behalf. The employer participated by Direct Support Manager Laura Bosco, Human Resources Manager Nasima Baerde and was represented by TALX in the person of Tracy Taylor.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Krista Burgett was employed by Mosaic from June 7, 2010 until September 7, 2010 as a full-time direct support associate. A series of text messages between the claimant and Laura Bosco on September 2, 2010, resulted in the claimant submitting her two-week notice. She was not pleased with the amount of driving she had to do for her job duties and the amount of reimbursement. Ms. Bosco said that human resources would be contacting the claimant.

For reasons which are not clear the claimant thought she had been discharged by Ms. Bosco because the manager had texted that “other arrangements” needed to be made regarding a client. Ms. Burgett did not ask for clarification but assumed she had been fired. She was no-call/no-show to work for two of her shifts on September 3 and 6, 2010 as a result. On September 7, 2010, Human Resources Manager Nasima Bosco spoke with the claimant and notified her she had been discharged for being no-call/no-show to work for those two shifts.

Krista Burgett has received unemployment benefits since filing an additional claim with an effective date of September 5, 2010.

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(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 claimant assumed she had been fired because, after she announced her resignation, the manager said other arrangements would have to be made for her clients. At no time did Ms. Burgett actually speak with Ms. Bosco, but was content with her interpretation of a text message that did not say she had been fired, only that other arrangements would be made for her clients after Ms. Burgett submitted her two-week notice.

The claimant maintained she did call in prior to her shift on September 6, 2010, but not for the purpose of reporting she would be absent. She contacted the human resources manager, not Ms. Bosco, and only to find out "why she had been fired." When it became clear Ms. Bosco had not fired her the previous Thursday, she was dismissed for being no-call/no-show for the past two shifts.

Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without good cause attributable to the employer. *LaGrange v. IDJS*, (Unpublished, Iowa App. 1984). The administrative law judge finds the reasoning in that case to be persuasive. The claimant made certain assumptions about the meaning of a text message and, rather than make direct contact with her manager and actually speak with her about the meaning of the text, she simply stopped coming to work.

The claimant quit because of the distance she had to drive for her job but this was a known factor when she accepted the position. The employer attempted to make other arrangements for her but she did not find them satisfactory. The claimant quit without good cause attributable to the employer and is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of September 28, 2010, reference 02, is modified in favor of the appellant. The claimant quit without good cause attributable to the employer and is disqualified as of the date her two-week notice would have expired on September 16, 2010. She was discharged prior to the effective date of her resignation and is eligible from that date until the date of her resignation. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css