

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSICA L ADAMS

Claimant

QHK ENTERPRISES LLC

Employer

APPEAL 18A-UI-05162-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/25/17

Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the April 24, 2018, (reference 03) unemployment insurance decision that allowed benefits from April 1, 2018 until April 14, 2018. The parties were properly notified of the hearing. A telephone hearing was held on May 23, 2018. The claimant did not participate. The employer participated through attorney Laura Folkerts and Chief Executive Officer Husna Khan. Official notice was taken of the administrative record.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a medical assistant from September 25, 2017, until this employment ended on March 31, 2018, when she voluntarily quit.

On March 28, 2018, claimant provided written notice that she was resigning effective April 12, 2018 as she had accepted a position with another employer. March 31, 2018 was claimant's first scheduled shift following the submission of her resignation. When claimant arrived at work she asked Khan if she had received the resignation letter. Khan indicated she had and asked claimant if it would be possible to make her last day be April 10, 2018, instead of April 12.

Claimant became very upset and told Khan she needed to work until April 12. Khan then explained the only reason she was asking was because April 10 was the last day of the pay period and it would mean less work for Khan if she did not have to pay claimant for two days the following pay period. Khan then had to excuse herself from the conversation to assist a patient. Khan was then called to the back by one of the doctor's, Dr. Kinskey. Dr. Kinskey told Khan claimant had her coat on and was getting ready to leave and wanted her to come back to see if she could stop her, as his attempts had been unsuccessful. Khan went to the back where claimant said she was done and left, without speaking anymore to Khan. Claimant did not return to work again. Khan testified, had claimant stayed, she would have been permitted to work through her entire notice period.

The claimant filed a new claim for unemployment insurance benefits with an effective date of June 25, 2017 and an additional date of April 1, 2018. The claimant has not received any benefits to date. The employer did not participate in the April 20, 2018 fact finding interview, regarding the separation. The fact finder determined claimant qualified for benefits for the two week period beginning April 1 and ending April 14, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.25 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:

(27) The claimant left rather than perform the assigned work as instructed.

...

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive

academic term or year and the offer of work was within the purview of the individual's training and experience.

(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.

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). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Here, the claimant initially indicated her intent to resign effective April 12, 2018. However, when the employer asked if it would be possible for her last day to be April 10, she became very upset and quit effective immediately. The employer did not tell claimant she was being discharged prior to the proposed date of resignation and testified it would have allowed her to continue working until April 12, 2018. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer, according to Iowa law. Benefits are denied. As no benefits have been paid to date, the issues of overpayment and participation are moot.

DECISION:

The April 24, 2018, (reference 03) unemployment insurance decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as 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 issues of overpayment and participation are moot.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/scn