

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERESA K BISHOP
Claimant

SAC & FOX TRIBE
Employer

APPEAL 16R-UI-08958-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/12/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 29, 2016 (reference 01) unemployment insurance decision that denied benefits based upon her voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on September 7, 2016. The claimant, Teresa K. Bishop, participated personally. The employer, Sac & Fox Tribe, participated through Representative Lucie Roberts and witnesses Patty Balk, Dan Stromer and William Goodman.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a hotel sales associate. She began working for this employer on November 2, 2007 and her employment ended on June 11, 2016. Her job duties included booking events for the conference center; ensuring proper payment was received for the events; attending the events and working with catering to ensure that the events ran smoothly; and recruiting new business. Her immediate supervisors were Patty Balk and Brian Ehrig. William Goodman supervised Ms. Balk and Mr. Ehrig.

Claimant moved with her fiancé to Florida at the end of June, 2016. Claimant decided that she would move to Florida with her fiancé because his mother's health was failing and he needed to care for her.

Claimant tendered her written resignation on May 25, 2016 to Mr. Goodman, the General Manager. The written resignation stated that she would work until June 11, 2016 when she had an event scheduled so long as she received her commission for that event. Claimant was allowed to work this final event and received her commission for doing so.

If claimant had not voluntarily quit, there was continuing work available. Claimant was not going to be discharged or laid off for lack of work. Claimant had received no discipline during the course of her employment.

During the course of her employment claimant's job title was transferred from the hotel department to the food and beverage department. This change was in 2010. Claimant's job duties changed when that occurred in that she was required to attend the entire event that she booked to ensure that it ran smoothly. When her job title was listed under the hotel department she only attended the beginning of an event and was not required to stay for the duration of the event.

Claimant's commission structure also changed in 2010 to include shared commissions between her and another co-worker named Liz; however, the gross commissions between the two employees were split equally at that time. This structure changed again in 2012 back to only claimant receiving commissions when Liz no longer worked for the employer.

Claimant and another co-worker named Peggy did not get along. Peggy worked in the catering department and claimant worked with her on a daily basis in order to ensure that events ran smoothly. Claimant complained to her supervisors about decisions Peggy made regarding events and Peggy would complain to her supervisors about decisions claimant made regarding events. These disagreements would range from how the tips were sorted to what silverware would be used. These concerns were addressed by either Mr. Ehrig or Ms. Balk each time the two could not be able to come to an agreement. Peggy did not typically yell or use profane language with claimant when these disagreements would occur. Peggy was not claimant's supervisor.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code §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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case claimant tendered her written resignation to Mr. Goodman. As such, this case must be analyzed as a voluntary quit case and not a discharge case. 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).

Claimant contends that her job duties changed in 2010 when she was transferred from the hotel department to the food and beverage department. This included her having to work more hours when attending an event that she booked. Claimant's commission structure also changed to include shared commissions between her and Liz; however, the gross commissions between the two employees were split equally. This structure changed back in 2012 to only claimant receiving commissions when Liz was no longer working for this employer. If claimant was able to prove a substantial change in the contract of hire, she would be entitled to benefits.

Iowa Admin. Code r. 871-24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

There was no substantial change in the contract of hire. While claimant's commission structure changed for a period of time, it was changed back to the original structure in 2012. When claimant's position moved from being listed under the hotel department to the food and beverage department she was required to attend the duration of the events that she booked, rather than just the beginning of the event. This resulted in claimant working an average of 42 hours per week rather than 40 hours per week. This is a 5% average of increased hours worked. This is not substantial. Further, this change was made in 2010. Claimant continued to work these hours for six years after this change was made. Claimant acquiesced to any changes to her working hours.

Claimant also contends that she voluntarily quit due to intolerable working conditions with a co-worker named Peggy. The claimant would be entitled to benefits if her voluntary quitting was based upon intolerable or detrimental working conditions.

Iowa Admin. Code r. 871-24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

Claimant and Peggy had disagreements over how the events would be run. These disagreements would range from how the tips were sorted to what silverware would be used. These disagreements rarely involved yelling or profane language. These disagreements were handled by claimant's supervisors when they were brought to their attention. These disagreements do not rise to the level of intolerable or detrimental working conditions.

Claimant tendered a written resignation which was accepted. She moved to be closer to her fiancé's family. Claimant's inability to work with other employees is not a good-cause reason to voluntarily quit her employment which would be attributable to the employer.

Iowa Admin. Code r. 871-24.25(37) 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 § 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 § 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:

(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.

Iowa Admin. Code r. 871-24.25(2) 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 § 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 § 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:

(2) The claimant moved to a different locality.

Iowa Admin. Code r. 871-24.25(6) 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 § 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 § 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:

(6) The claimant left as a result of an inability to work with other employees.

While claimant's leaving the employment 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 must be denied.

DECISION:

The June 29, 2016 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld in regards to this employer until such time as claimant is deemed eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

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