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

REBEKAH D GONZALES
Claimant

APPEAL NO. 13A-UI-12011-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LINK SNACKS INC
Employer

OC: 09/22/13
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 filed an appeal from the October 15, 2013, (reference 01) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on November 19, 2013. Claimant did participate with her fiancé Anthony Paez. Employer did not respond to the hearing notice instruction and did not participate.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a production worker and was separated from employment on September 16, 2013. On that day at work she had a verbal and physical fight with her employee daughter (17 years old). She told supervisor Ryan Smith about what happened with her daughter and asked if she could leave for the day. He said she could but said nothing else to her and did not tell her she was fired. Her days off were Tuesday and Wednesday. She did call but got no response on Tuesday, Wednesday, and Thursday. She was next scheduled to work on Thursday. She did not report for work because she thought she was or would be fired, the embarrassment about what happened, and the commuting distance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to employer.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.,* (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984). Since claimant did not report for work, and no one told her she was fired, the failure to continue reporting to work was an abandonment of the job. Benefits are denied.

DECISION:

The October 15, 2013, (reference 01) decision is affirmed. Claimant voluntarily left the employment without good cause attributable to 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.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs