

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MELISSA SMITH

Claimant

APPEAL NO. 19A-UI-05924-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC

Employer

OC: 06/30/19

Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Melissa Smith filed a timely appeal from the July 17, 2019, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. Smith voluntarily quit on May 31, 2019 without good cause attributable to the employer. After due notice was issued, a hearing was held on August 16, 2019. Ms. Smith participated and presented additional testimony through Kennastashia Clay. Karyn Goldensohn represented the employer. Exhibit 1 was received into evidence.

ISSUES:

Whether Ms. Smith voluntarily quit the employment without good cause attributable to the employer.

Whether Ms. Smith was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Melissa Smith was employed by West Liberty Foods, L.L.C. as a full-time Process Leader. Ms. Smith began the employment in December 2018. Ms. Smith's work hours were 8:00 p.m. to 2:00 a.m. or 3:00 a.m., Monday evening through Saturday morning. The workplace is in West Liberty. At all relevant times, Ms. Smith resided in Davenport. Ms. Smith was responsible for securing her own transportation to and from the workplace. Ms. Smith's daughter, Kennastashia Clay, worked for West Liberty Foods at the same time as Ms. Smith. Ms. Smith relied upon Ms. Clay for transportation to and from work. Ms. Clay had two vehicles that she used to drive herself and her mother to work. Toward the end of Ms. Smith's employment, one of Ms. Clay's vehicles broke down in the West Liberty Foods parking lot, where the vehicle continued to rest beyond the end of Ms. Smith's employment.

Ms. Smith last performed work for the employer in a shift that started on the evening of May 24, 2019 and that ended in the early morning hours of May 25, 2019. Ms. Smith was next scheduled to work at 8:00 p.m. on May 28, 2019, the Tuesday following Memorial Day. On

May 28, Ms. Smith properly notified the employer of her need to be absent due to transportation issues. If Ms. Smith needed to be absent from work, the employer's attendance policy required that she called a designated telephone number no later than two hours after the scheduled start of her shift and provide her name, her shift, her supervisor's name, and the reason for her absence. The designated number was the number for the employer's security personnel. The security personnel were charged with the responsibility for documenting the call. The employer reviewed the attendance policy with Ms. Smith at the start of her employment. Under the policy the employer deemed an absence of three days without proper notice to the employer to be a voluntary quit. Ms. Smith's absence from work on May 28 resulted from both of Ms. Clay's vehicles being non-operable. Ms. Clay's second vehicle was rendered non-operable by flooding that occurred in Davenport.

After the absence on May 28, 2019, Ms. Smith was absent from work due a lack of transportation on May 29, 30 and 31. While Ms. Smith asserts she called the absence reporting number each day, the employer documented the absences as no-call/no-show absences.

On June 3, 2019, Karyn Goldensoph, Human Resources Supervisor, contacted Ms. Smith to discuss the extended absence from the workplace. Ms. Goldensoph told Ms. Smith that that Ms. Smith had accumulated three no-call/no-show absences. Ms. Smith said that she did not have transportation to work because one of her daughter's vehicles was stuck at West Liberty Foods and the other was flooded. Ms. Goldensoph asked Ms. Smith what she intended to do. Ms. Smith said that due to her lack of transportation, she guessed she had to quit. The employer documented the separation as a voluntary quit. On June 7, 2019, Ms. Smith and Ms. Clay reported to the workplace for the sole purpose of returning employer-issued equipment and collecting their last paycheck. Ms. Smith's other daughter provided Ms. Smith and Ms. Clay a ride to the workplace on that day.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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(1) 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:

(1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

Iowa Admin. Code r. 871-24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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.

Regardless of whether Ms. Smith reported the three absences the employer documented as no-call/no-show absences, the evidence in the record indicates that Ms. Smith voluntarily quit the employment on June 3, 2019 due to a lack of transportation to the workplace. The quit was without good cause attributable to the employer. Ms. Smith is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Smith must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The July 17, 2019, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective June 3, 2019. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs