

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RENADA L FARRIS
Claimant

WESLEYLIFE
Employer

APPEAL 19A-UI-05435-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/02/19
Claimant: Appellant (1)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Renada Farris (claimant) appealed a representative's June 28, 2019, decision (reference 03) that concluded ineligibility to receive unemployment insurance benefits because the claimant had voluntarily quit employment with WesleyLife (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 1, 2019. The claimant participated personally. The employer was represented by Thomas Kuiper, Hearings Representative, and participated by Cindy Severson, Director of People and Culture. The administrative law judge took official notice of the administrative record.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 30, 2018, as a full-time certified nursing assistant. On January 15, 2019, the claimant submitted her letter of resignation effective January 29, 2019. It read in part, "An opportunity has recently arisen whereby I will be able to make greater use of my educational background and special abilities in CNA. I am submitting my resignation effective January 29, 2019." The claimant did not have another job when she quit work.

Six hours in advance of the start of her shift on January 22, 2019, the claimant notified the scheduler that she would not be at work due to inclement weather. The scheduler told the claimant she had to find a replacement or she would be terminated. The claimant searched but could not find a replacement worker. The claimant called the scheduler again. The scheduler told the claimant she would be giving up her position if she did not find a replacement. The claimant told the scheduler that she had never called in an absence or been late in the past. The information did not change the scheduler's mind. The claimant tried to reach the administrator but was unsuccessful. She called the scheduler again and said she was unable to appear for work and asked if she was fired. The scheduler told her that because she put in her notice of resignation, she was not allowed to be absent from work. If she did not appear for work, she did not have a job.

The claimant was unable to appear for work on January 22, 2019. She thought she was fired. The scheduler had not been given the authority to terminate employees by the employer. The

employer did not contact the claimant but paid her eight hours of wages on January 21 and 22, 2019. It paid her for 7.25 hours of wages on January 23, 2019. Continued work was available for the claimant had she not separated from employment on January 29, 2019.

The claimant filed for unemployment insurance benefits with an effective date of June 2, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer. Prior to her last day of work the employer discharged the claimant but has not proven misconduct.

Iowa Code section 96.5(2)a provides:

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

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 disqualification shall continue 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 Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.25(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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer has not met its burden of proof to show job related misconduct. The claimant was terminated after giving notice of her resignation. An employee is eligible to receive benefits from the day she is terminated until the date of her resignation if she filed for unemployment insurance benefits contemporaneous with the separation. The claimant did not file for unemployment insurance benefits until June 2, 2019. Because she did not establish a claim for benefits for the week ending January 26, 2019, she is not eligible to receive unemployment insurance benefits for that period.

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.

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's intention to voluntarily leave work was evidenced by her words and actions. She told the employer she was leaving and quit work as of January 29, 2019. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied as of the date she filed for unemployment insurance benefits, June 2, 2019.

DECISION:

The representative's June 28, 2019, decision (reference 03) is affirmed. The claimant voluntarily left work without good cause attributable to the employer as of January 29, 2019. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs