

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHANEY L GILBERT
Claimant

ADEL HEALTHCARE MANAGEMENT LLC
Employer

APPEAL 21R-UI-12872-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/11/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quit from Employment
Iowa Code § 96.5(2)a – Discharge from Employment

STATEMENT OF THE CASE:

On December 26, 2020, the claimant, Shaney L. Gilbert, filed an appeal from the December 18, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit her employment due to dissatisfaction with working conditions. The parties were properly notified of the hearing. A telephonic hearing was held at 8:00 a.m. on Thursday, August 5, 2021. The claimant, Shaney Gilbert, participated. The employer, Adel Healthcare Management, L.L.C., participated through Kody Petrich, Nursing Home Administrator. Claimant's Exhibit A was received and admitted into the record without objection.

ISSUES:

Did the claimant quit the employment without good cause attributable to the employer or was she discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a registered nurse, from August 28, 2019 until October 11, 2020, when she was discharged from employment.

Claimant last worked for the employer at its Adel Acres healthcare facility on Sunday, October 11. That day, a particular patient had both family and non-family attempting to visit them at the facility. Claimant believed, based on the employer's policies and CDC protocols, that only family was allowed to visit the patient. Therefore, she turned a non-family-member away and would not let them visit the patient. After she turned this person away, claimant received an angry and threatening telephone call from a member of the patient's family. Claimant talked to this person and handled the call to the best of her ability.

Following the angry telephone call, Director of Nursing Joanne called claimant to ask whether she had told the angry caller that patients had died at the facility without family members

present. Claimant said she did, because this was true during COVID-19. Claimant knew she was out of her element in handling this issue, so she asked Joanne to come in and assist her. Initially, Joanne told claimant that if she had someone relieve her and left before the end of her shift, the employer would consider that her resignation. Ultimately, Joanne and Assistant Director of Nursing Kawner came to assist claimant. Claimant was required to finish all her charting and then she was instructed to leave prior to the end of her shift. Later that evening, claimant received a text message from the administrator discharging her from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

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.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left the employment. *Irving v. Empl. App. Bd.*, 15-0104, 2016 WL 3125854, (Iowa June 3, 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Empl't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Empl't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It 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). Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Empl't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

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. Empl't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); see also Iowa Admin. Code r. 871-24.25(35). 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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Empl't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following

factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's version of events to be the more credible narrative. The employer relied entirely on second-hand testimony and produced no supporting documentation. Claimant, in contrast, was a firsthand witness to all of the events of October 11 and is the more reliable source in this matter.

There is no credible evidence in the record that claimant intended to end her employment relationship with the employer. Therefore, this case will be analyzed as a discharged from employment and the employer bears the burden of establishing disqualifying misconduct.

Iowa Code § 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 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. 871-24.32(4) provides:

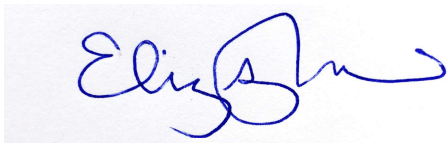
(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established...

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all, provided the discharge is not contrary to public policy. However, if the employer fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

In this case, claimant was discharged from employment after a debacle involving visiting restrictions during the pandemic. The employer did not present any evidence that claimant willfully ignored the employer's policies or recklessly put anyone in danger. The record developed during the hearing establishes that claimant tried to keep the residents, staff, visitors, and herself safe by restricting a non-family-member from visiting. She then may have mishandled a call from an angry relative regarding the turned-away visitor, but again, this was not willful or deliberate behavior against the employer's interests. She was simply overwhelmed and doing the best she could. Claimant asked for assistance, received the assistance she needed, and left her shift early only after receiving permission from authority figures. The employer has failed to establish claimant was discharged for disqualifying, job-related misconduct. Benefits are allowed.

DECISION:

The December 18, 2020 (reference 01) unemployment insurance decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

August 10, 2021

Decision Dated and Mailed

lj/kmj