

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGELA R NEMMERS
Claimant

INNOVATIVE INJECTION
Employer

APPEAL 16A-UI-12933-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/23/16
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.25(38) – Fired Before Date of Resignation
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 29, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant resigned from her employment and her resignation was accepted by her employer. The parties were properly notified of the hearing. A telephone hearing was held on December 21, 2016. The claimant, Angela R. Nemmers, participated and was represented by David A. Denison, attorney at law. The employer, Innovative Injection, registered a participant but was not available when called at the hearing time and did not participate in the hearing. Claimant's Exhibits 1 and 2 were received and admitted into the record. Claimant's Exhibits 3 through 6 were received but were not admitted, per claimant's request.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the 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, most recently as a quality auditor, beginning January 3, 2016.

Claimant testified that she had difficulty working with the third-shift production supervisor, Karom. On September 21, when claimant was attempting to explain a production issue to one of the operators, Karom stated, "My people do not take instruction from a woman." Claimant had previous issues working with Karom related to differences regarding the production of certain parts. Claimant testified that as the quality auditor, it was among her responsibilities to scrutinize the products being made on her shift and she was not supposed or expected to simply "rubber stamp" the production work completed. On one occasion, claimant and Karom disagreed on whether a part was being produced according to the specs given by the client. When Karom instructed the operator to continue making the part, claimant had to reject each of

the parts being produced. She was later told by upper management that she had made the right decision in this circumstance.

Claimant submitted a written resignation and two-week notice on Sunday, September 24, 2016. Claimant requested that her employment end on October 8, 2016. Claimant testified that her decision to resign was based on production supervisor Karom's behavior. Claimant explained that Karom created a hostile work environment for her and made her job more difficult. On September 26, claimant's new supervisor spoke with her and asked why she was leaving her employment. When she said the reason was Karom, the new supervisor told her that he would go to human resources and address the problem. After that day, claimant's interactions with Karom improved. Therefore, on or about September 30, claimant submitted a letter requesting to rescind her resignation. (Exhibit 2) On October 5, claimant met with Scott Mavin in human resources and Smithson, one of the company leaders. During this meeting, Mavin requested claimant's time card and said they did not need her to return to work. Claimant was scheduled to work six additional hours before her anticipated end of employment on October 8. Neither Smithson nor Mavin told claimant why she was being told to end her employment that day.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

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 Admin. Code r. 871-24.25 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:

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

(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.

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). Here, claimant testified that she submitted a resignation letter after an altercation with Karom in which he made a comment that was disparaging about women. While this is objectionable and inappropriate, the average employee in claimant's situation would not have felt similarly compelled to quit her employment after the incident, even given claimant's history with Karom. 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). Claimant submitted her resignation letter to the employer, and this resignation was accepted. 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.

However, claimant was discharged before her anticipated last day of employment. 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.

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). In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it 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.

Here, the employer did not provide any information indicating claimant was discharged for disqualifying misconduct. Claimant testified that she was not given a reason for being discharged, and the timing indicates she was discharged for requesting to rescind her resignation, which is not misconduct. Claimant would be eligible for benefits from the date she was fired – October 5 – until her proposed last day of employment – October 8, provided she was able to work and available for work during that period. However, claimant did not file her claim for benefits until the week of October 23, 2016. Therefore, claimant is not actually eligible for benefits based on her separation from this employer.

DECISION:

The November 29, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant separated from employment without good cause attributable to the 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/