

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUSAN C OLIVER**

Claimant

**APPEAL NO. 10A-UI-02440-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VETERINARY ASSOCIATES**

Employer

**OC: 01/03/10**

**Claimant: Appellant (4)**

Section 96.5-1 – Voluntary Quit

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Susan Oliver (claimant) appealed a representative's February 10, 2010 decision (reference 01) that concluded she was only eligible to receive unemployment insurance benefits from January 3 through 16, 2010, after her separation from work with Veterinary Associates (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 30, 2010. The claimant participated personally. The employer was represented by Michael Kennedy, Attorney at Law, and participated by David Nyren, Partner Robert Snakenberg, Veterinarian/Partner. Karen Winborn observed the hearing. The employer offered and Exhibits One through Three were received into evidence.

**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 3, 2006, as a full-time associate veterinarian. On October 12, 2009, the claimant made an announcement that she would be adopting a baby. She said she would be resigning when the adoption went through and she hoped that would be in mid-January 2010. The employer took steps to replace the claimant's position. On January 3, 2010, the employer told the claimant that she did not need to report to work any longer. The adoption went through in March 2010.

**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 told the claimant not to work but has not proven misconduct.

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.

871 IAC 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.

871 IAC 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 discharged after giving

notice of her resignation. The claimant is eligible to receive benefits until the date of her resignation, March 1, 2010.

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer on March 1, 2010.

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's intention to voluntarily leave work was evidenced by the claimant's actions. The claimant told the employer she would resign after the adoption. There was no evidence presented at the hearing of good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. The claimant is not qualified to receive unemployment insurance benefits after February 28, 2010.

**DECISION:**

The representative's February 10, 2010 decision (reference 01) is modified in favor of appellant. The claimant is qualified to receive benefits, provided she is otherwise eligible until March 1, 2010. On March 1, 2010, the claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount provided she is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs