

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGELA LINCOLN
Claimant

SFA INC
Employer

APPEAL 21A-UI-00942-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Angela Lincoln, filed an appeal from the November 24, 2020, (reference 03) unemployment insurance decision that benefits based upon that she quit work voluntarily. The parties were properly notified of the hearing. A telephone hearing was held on February 2, 2021. The claimant participated. The employer participated through Sarah Ferreter. The administrative law judge took notice of the administrative records. Exhibits 1, 2, A, B, C and D were received into the record.

ISSUE:

Whether the claimant quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed part-time as a tax preparer for the employer, SFA Inc., at various points in time during each of the past four years. The most recent term of employment the claimant had with the employer was from February 3, 2020, until this employment ended on March 14, 2020, when she quit.

The claimant's regularly scheduled hours were from 9:00 a.m. to 3:00 p.m. Monday through Thursday. The claimant could also pick up additional hours during tax season. The claimant provided Facebook messenger messages discussing her schedule prior to her hire. (Exhibit A)

On March 14, 2020, Ms. Ferreter and the claimant spoke about how her hours might change if the schools were closed due to developments with the Covid19 pandemic. Specifically, they spoke about the idea of the claimant working after her scheduled hours when her husband came home. Ms. Ferreter gave the claimant keys to the office with the understanding that she could work evenings and weekends.

On March 15, 2020, Ms. Ferreter sent an email to Mark Vining, a former employee, about filling in for the claimant because she was not able to perform work after the schools closed. In a subsequent email, Ms. Ferreter stated her belief the claimant was off for spring break. (Exhibit 1)

On March 16 2020, the claimant brought news about the Covid19 pandemic to Ms. Ferreter's attention. Specifically, the claimant did not think she could continue to work her previously discussed hours of 9:00 a.m. to 3:00 p.m. because the Linn-Mar Community School District was closing.

On March 20, 2020, the claimant heard news that tax season would be extended out to July 15, 2020, in response to the Covid19 pandemic. This prompted her to begin a text message conversation outlined in the following paragraphs.

On March 20, 2020, Ms. Ferreter told the claimant that Mr. Vining had been brought in to work at her desk. Over the next few text messages, the claimant attempted to figure out what was going to happen given aftermath of Covid19 and Ms. Ferreter's hiring of Mr. Vining. At one point, the claimant said, "I wonder if I should file unemployment [sic] like especially if you close?" In response, Ms. Ferreter replied, "You can file now. It won't hurt my business. I'm guessing your [sic] done for tax season though unless we shut down. I still want to work hard to get everyone done by April 15, 2020." (Exhibit C) Ms. Ferreter exchanged messages about whether they were still planning on her working this summer. At one point, the claimant asked, "Okay so you're saying I'm done?"

After sending the final text message mentioned in the previous paragraph, Ms. Ferreter and the claimant spoke for about a minute and a half. On the phone, Ms. Ferreter made reference to the school being closed at least for the next four weeks. The claimant then said she was going to file for unemployment. In response, Ms. Ferreter said she was not sure she would get unemployment due to filings Ms. Ferreter had not yet made. The claimant abruptly hung up on Ms. Ferreter.

On March 20, 2020 after the brief phone call, Ms. Ferreter sent, "I have no idea what happened. So you don't have to be done if that's what you are thinking. I was under the impression you needed to be off for the four weeks schools out. I needed to fill that spot until tax season is over. Heather (last name unknown) is in the same boat. Once she's off for school being out, I have someone coming to fill her spot." The rest of Ms. Ferreter's message talks about how these employees would work together regarding scheduling time in the office. Ms. Ferreter pointed out that they had not talked about the possibility she would work during tax season. Ms. Ferreter also apologized if she misled the claimant. (Exhibit C)

On March 20, 2020, the claimant replied that Ms. Ferreter told her earlier over the phone that she had been replaced for tax season. The claimant said Ms. Ferreter should have let her known earlier. The claimant also pointed out that she was never given a password to open her pay stub. In response, Ms. Ferreter gave her the password for her pay stub and said the reason Mr. Vining was working there was to temporarily fill in for the claimant during the four weeks she expected the schools to be closed. In response, the claimant wrote, "Thanks." (Exhibit C) The claimant did not attempt to contact Ms. Ferreter later.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged, but voluntarily left employment without good cause attributable to 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.

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 has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

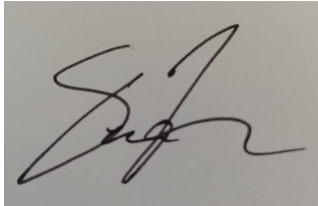
The claimant contends she was terminated on March 20, 2020 because Ms. Ferreter told her she could file for unemployment and would not be needed for the rest of tax season. The claimant's contention rests on premises that her filing of unemployment would be due to a separation and that Ms. Ferreter was referring to the extended tax season.

The administrative law judge does not see how the text messages point to either conclusion. Ms. Ferreter clarified she was talking about the claimant's desire to be off the next four weeks, which would extend to the typical tax deadline April 15, 2020. It is uncontroverted that the claimant had access to the office for this period. She also clarified that the reason the claimant had keys was to gain access during the building outside of regular business hours. Ms. Ferreter also told the claimant she was not being terminated several times including in the final text message sent. Even the claimant's characterization of the call with Ms. Ferreter does not support the conclusion she was terminated because it rests on the premises in the paragraph above.

Since claimant did not follow up with management personnel or the owner and her assumption of having been fired was erroneous, the failure to continue reporting to work was an abandonment of the job. Benefits are denied.

DECISION:

The November 24, 2020, (reference 03) unemployment insurance decision is affirmed. Claimant voluntarily quit 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.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

February 26, 2021
Decision Dated and Mailed

smn/kmj