

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAWN M LIENAU**

Claimant

**APPEAL NO. 09A-UI-05139-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BICKFORD SENIOR LIVING GROUP LLC**

Employer

**Original Claim: 03/01/09**

**Claimant: Appellant (1)**

Iowa Code section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Dawn Lienau filed a timely appeal from the March 18, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 29, 2009. Ms. Lienau participated. Bonny Smith, Building Director, represented the employer. Exhibits One and Two were received into the record. The record was left open so that Ms. Lienau could provide a police report and an obituary concerning her father. Ms. Lienau provided the obituary on May 1 and it was received into the record as Exhibit A. Ms. Lienau requested additional time to provide the police document. If such is provided, it will be received into the record as Exhibit B. The administrative law judge concludes that he does not need to wait for the police document because it would not change the outcome of this matter.

**ISSUE:**

Whether Ms. Lienau voluntarily quit without good cause attributable to the employer or was discharged for misconduct in connection with the employment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Dawn Lienau was employed by Bickford Senior Living Group as a full-time Certified Nursing Assistant (C.N.A.) and began the employment in October 2007. Ms. Lienau was assigned to the third shift, which started at 11:00 p.m. and ended at 7:00 a.m. Ms. Lienau's supervisor was Bonny Smith, Building Director. In Ms. Smith's absence, Dawn Kleve, R.N. Coordinator, was Ms. Lienau's supervisor.

Ms. Lienau last performed work for the employer during the shift that started on January 16, 2009. At 2:00 a.m. on January 17, Ms. Lienau left work before the scheduled end of her shift due to a family emergency. Ms. Lienau's 13-year-old son was home alone and thought that Ms. Lienau's estranged boyfriend was trying to break in. Ms. Lienau's 17-year-old son was returning home to be with the younger son when he was in a motor vehicle accident that required a trip to the hospital.

When Ms. Lienau received the call from her 13-year-old, she spoke with Angela Brown, Occupational Medical Technician, about her need to leave work. Ms. Lienau, Ms. Brown, and another C.N.A. in the secure Alzheimer's unit were the only three staff at the facility. Ms. Smith was on vacation and not available. Ms. Kleve, the R.N. Coordinator, was on call. Ms. Brown told Ms. Lienau to contact Ms. Kleve to see what she needed to do, since Ms. Smith was on vacation. The employer's policy required that Ms. Lienau find someone to cover her shift before she left. Ms. Lienau's C.N.A. certification also required that she not leave the residents in her care unattended. Ms. Lienau attempted to contact Ms. Kleve, but got no answer. Ms. Lienau decided she needed to leave to assure her child's safety. Ms. Lienau or someone else had already contacted the police. The police arrived at the home before Ms. Lienau did.

After Ms. Lienau finished speaking with the police, she contacted Ms. Brown at the workplace. Ms. Brown indicated that she had found someone to cover the remainder of the shift. Ms. Brown told Ms. Lienau that because she left work early without finding a replacement, she could not return to work until she spoke with Ms. Smith upon Ms. Smith's return. Ms. Smith was scheduled to return on Monday, January 19. Ms. Brown did not have authority to suspend Ms. Lienau from the employment, but Ms. Lienau did not know this. Ms. Lienau was scheduled to work on January 17, 18, 19, and 20. Ms. Lienau did not report to work on January 17 and 18, because she believed she was suspended.

Ms. Smith, director, returned to town on Sunday, January 18, and left a telephone message for Ms. Lienau in which she indicated she needed to set up a meeting with Ms. Lienau. Ms. Lienau returned the call on Monday, January 19. Ms. Smith and Ms. Lienau agreed to meet on Tuesday, January 20. At that meeting, Ms. Smith told Ms. Lienau that she would be suspended up to a week while the employer gave her an opportunity to produce a police report or medical documentation to support her need to leave work early on January 17, 2009. Ms. Lienau said she could produce a police report and might be able to produce medical documentation of the 17-year-old's trip to the emergency room. Ms. Smith told Ms. Lienau that her position would be on hold while the employer waited for the documentation. Ms. Smith told Ms. Lienau that if she provided the requested documentation, the employer's corporate office would still have to make a decision about her continued employment.

Ms. Smith never heard anything further from Ms. Lienau.

On January 20, Ms. Lienau went to the Cedar Rapids Police Department to get documentation of the call for service, but was not immediately able to obtain such documentation. Ms. Lienau also encountered obstacles later on in getting medical documentation concerning the 17-year-old's trip to the emergency room.

On January 20, Ms. Lienau left Cedar Rapids for Moline, Illinois, where her father was hospitalized. Ms. Lienau stayed with her father, who passed away on January 27. The funeral service took place on January 30. Ms. Lienau returned to Cedar Rapids on February 1.

Ms. Lienau did not notify the employer of her need to travel to Moline to be with her father. The employer had a bereavement leave policy. Ms. Lienau did not notify the employer that she had encountered obstacles in obtaining the police report and medical documentation. Ms. Lienau did not make further contact with the employer. Ms. Lienau assumed that since she had missed the week deadline for providing documentation to the employer, that meant she was discharged from the employment.

Though Ms. Lienau had not performed work for the employer since January 17, 2009, she did not establish her claim for unemployment insurance benefits until the first week of March. The claim was deemed effective March 1, 2009.

### **REASONING AND CONCLUSIONS OF LAW:**

One of the questions the administrative law judge must address is whether Ms. Lienau voluntarily quit or was discharged from the employment.

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. See 871 IAC 24.32(9).

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Code section 96.5-1-c 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. But the individual shall not be disqualified if the department finds that:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

The weight of the evidence indicates that Ms. Lienau's claim for benefits was not based upon the up-to-one-week disciplinary suspension imposed by the employer. That suspension would have concluded on or before January 27. Almost as soon as the suspension started, Ms. Lienau left town to be with her father. This was certainly a compelling reason for being away from work and for not taking immediate steps to provide the employer with the documentation the employer had requested. However, Ms. Lienau never informed the employer of her need to travel to Moline to be with her father. Ms. Lienau never returned to the employer once she returned to Cedar Rapids on February 1, 2009. Ms. Lienau essentially walked away from the employment before the employer had a chance to make a definitive decision about whether she would be allowed to continue in the employment.

The administrative law judge concludes that Ms. Lienau voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Lienau is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly

benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Lienau.

**DECISION:**

The Agency representative's March 18, 2009, reference 01, decision is affirmed. The claimant voluntarily quit, not as a result of no-call, no-show absences, but by failing to return to the employer after January 20, 2009. The claimant's voluntarily quit was without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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