

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEXIE DICKES

Claimant

APPEAL NO. 10A-UI-07475-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES

Employer

Original Claim: 04/18/10

Claimant: Appellant (1)

Iowa Code § 96.5-1 - Voluntary Quit
871 IAC 24.25(4) - Voluntary Quit Without Good Cause

STATEMENT OF THE CASE:

Lexie Dickes (claimant) appealed an unemployment insurance decision dated May 11, 2010, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Care Initiatives (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 12, 2010. The claimant participated in the hearing. The employer participated through Administrator Jack Studer, Dietary Manager Julie Peterson, and Employer Representative Tom Kuiper. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a part-time dietary aide/cook from March 29, 2009 through March 10, 2010. Shortly after reporting to work on March 10, 2010, a co-worker accused her of taking \$20.00 out of her purse. The dietary manager asked the claimant if she had taken the money and the claimant denied the allegation. The dietary manager asked the claimant if she could search the claimant and the claimant said that she could.

The dietary manager checked the claimant's pockets and found nothing. She then looked through the claimant's purse and only found a couple of dollars, but not the stolen \$20.00 bill. The claimant was upset after that and called her father. He reported to the work site and they both sat and waited to talk to the administrator, who had stepped out. The employer said the office manager asked the claimant to return to work while she was waiting, but the claimant refused. The claimant denies being asked to return to work while waiting and when asked

during the hearing why she simply did not continue working while waiting, she did not have an answer. The claimant and her father apparently spoke with the administrator and the claimant finished her shift that day.

She called in ill on March 11, 2010 and reported to work as usual on March 12, 2010. She went to the office to retrieve her paycheck and was upset that the employer had deducted one hour from her paycheck to cover the time she sat waiting for the administrator on March 10, 2010. She finished her shift anyway and was not scheduled on March 13 and 14, 2010.

The claimant was a no-call/no-show on March 15, 2010, but she did call the corporate office that day complaining about being accused of taking money. The corporate office advised the employer about the telephone call, so the administrator called the claimant to talk about it but could not reach her. The claimant was scheduled on March 16, 2010, but the administrator was not going to be available that day, so he told the claimant in a phone message that he would excuse her from working on March 16, 2010. The claimant never returned any telephone calls to the employer and was a no-call/no-show on both March 17 and 18, 2010. The employer's attendance policy provides that an employee is considered a voluntary quit if she is a no-call/no-show for two consecutive workdays. The claimant was a no-call/no-show for three consecutive days ending March 18, 2010 and was considered to have voluntarily quit her employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, 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. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by failing to report to work after March 12, 2010.

871 IAC 24.25(4) 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 § 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 § 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was deemed a voluntary quit on March 18, 2010 after three days of no-call/no-show. It is her burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She quit because a co-worker accused her of taking money when she did not take it. The claimant failed to meet her burden and benefits are denied.

DECISION:

The unemployment insurance decision dated May 11, 2010, reference 01, is affirmed. 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.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw