

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TAMMY J SPRECHER**  
Claimant

**APPEAL 16A-UI-13297-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEYS MARKETING COMPANY**  
Employer

**OC: 11/06/16  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 5, 2016, (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit her employment without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on January 5, 2017. The claimant, Tammy J. Sprecher, participated, and witness Cathy Frasier also testified on claimant's behalf. The employer, Casey's Marketing Company, participated through Rosalind Gustafson, store manager.

**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 cashier, from February 4, 2014, until October 28, 2016, when she was discharged after an argument with a second assistant, Dorothea Wood. Claimant testified that Wood had asked her to stay past the end of her shift. This request upset claimant, as she had another shift coming up soon and no one was going to stay late and help her at that time. The two women got into an argument, Wood told claimant to leave, clock out, and go home. This is the first time during her tenure with the employer that claimant had ever been asked to leave work like that. Claimant believed she had been fired, and Frasier testified that claimant told her this immediately after the conflict occurred.

Gustafson testified that when she came to work the following day, Wood informed her about the altercation the day before and informed her that claimant believed she had been fired. Wood did not have the authority to fire claimant, but claimant testified that she believed Wood had this authority because she was in charge that day. Gustafson did not attempt to contact claimant and let her know that she had been fired. Gustafson believes that if an employee thinks she is

fired, that employee must take the initiative and contact management to clarify the employment status. Gustafson testified that she intended to discharge claimant anyway, due to her attendance. Gustafson admits that ordinarily, when an employee is late to work or has not reported for a scheduled shift, she will reach out to inquire about whether they are coming to work.

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

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed.

### *Voluntary Quit*

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 quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); see also Iowa Admin. Code r. 871-24.25(35). 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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). 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).

Here, the employer has not established that claimant voluntarily quit her employment. All parties agree that claimant believed she was fired on October 28 when Wood sent her home, and she did not report back to work because she believed she was no longer employed. While ordinarily, an employee must follow up with management in a scenario like this, claimant's management was aware she thought she was fired and validated that belief by making no contact with her to inquire about why she was not coming to work. Therefore, this case will be analyzed as a discharge from employment and the employer bears the burden to establish disqualifying misconduct.

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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the incident under its policy.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds claimant provided credible testimony that she was discharged on

October 28. The parties agree that claimant believed she was discharged at that time, and Gustafson testified that both she and Wood were aware of this belief. Even if Wood did not tell claimant that she was discharged, claimant's belief was reasonable, given that she had never before been sent home and no one took any action to dispel her belief.

Since most members of management are considerably more experienced in personnel issues and operate from a position of authority over a subordinate employee, it is reasonably implied that the ability to communicate clearly is extended to discussions about employment status. Regardless of whether Wood actually had the authority to discharge claimant, claimant believed she had this authority and the employer was aware of claimant's belief and aware that claimant thought Wood discharged her. Claimant testified Wood did not give her a reason for sending her home and discharging her, and the employer did not provide Wood or any firsthand witness to counter this or to testify about any misconduct that caused Wood to discharge claimant. The employer has not met its burden of proving claimant was discharged for disqualifying misconduct. Benefits are allowed.

**DECISION:**

The December 5, 2016, (reference 02) unemployment insurance decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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