

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PATRICIA L BARNES-MALMSTROM
Claimant

FAMILIES INC
Employer

APPEAL 19A-UI-06057-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/07/19
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting – Layoff Due to Lack of Work
Iowa Admin. Code r. 871-24.1(113) – Definitions – Separations
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer/appellant, Families Inc., filed an appeal from the July 29, 2019 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A first hearing was scheduled for August 22, 2019 but postponed to allow the parties to receive and review proposed exhibits. A telephone hearing was held on August 28, 2019. The claimant participated personally. The employer participated through Amy Gosnell. Mary Kay Townsend also testified. Employer Exhibits 1-8 and Claimant Exhibits A-H were admitted. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did the claimant voluntarily quit the employment with good cause attributable to the employer?
Was the claimant laid off due to a lack of work effective June 30, 2019?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer’s account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began employment as a functional family therapist in August 2017 (Employer Exhibits 2-3). In February 2019, the claimant sent an email to the employer, expressing her concern about a lack of clients being given and reductions in pay. She stated she intended to resign if circumstances did not change (Employer Exhibit 5). On February 8, 2019, the claimant was also informed that her job would end as a functional family therapist on

June 30, 2019 due to a loss of contract. At that time, the employer also notified the claimant and employees they were evaluating restructuring versus closing the premises as possible responses to the loss of contract (Townsend testimony).

The claimant and employer discussed the claimant accepting a position providing brief intensive services and in April 2019, the claimant was provided a job description, which she signed, for a Scott County Brief Intensive Family Services Counselor (Claimant Exhibit C). She also had new business cards provided by the employer to her to reflect the change in title (Barnes testimony). The employer disputed the claimant accepting the new position.

In mid-May, the claimant learned the contract for the employer to provide brief intensive family services would end effective June 30, 2019. The employer was able to restore some services in functional family therapy, but the claimant was no longer a functional family therapist. Continuing work was not available to the claimant as a Brief Intensive Family Services Counselor effective June 30, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation on June 30, 2019 was the result of a layoff due to a lack of work.

An unemployed person who meets the basic eligibility criteria receives benefits unless they are disqualified for some reason. Iowa Code § 96.4. Generally, disqualification from benefits is based on three provisions of the unemployment insurance law that disqualify claimants until they have been reemployed and they have been reemployed and have been paid wages for insured work equal to ten times their weekly benefit amount.

Iowa Admin. Code r. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

An individual is subject to a disqualification if the individual (1) "has left work voluntarily without good cause attributable to the individual's employer" Iowa Code § 96.5(1) or (2) is discharged for work –connected misconduct, Iowa Code § 96.5(2) a, or (3) fails to accept suitable work without good cause, Iowa Code § 96.5(3).

The first two disqualifications are premised on the occurrence of a separation of employment. To be disqualified based on the nature of the separation, the claimant must either have been fired for misconduct or have quit but not for good cause attributable to the employer. Generally, the employer bears the burden of proving disqualification of the claimant. Iowa Code § 96.6(2). Where a claimant has quit, however, the claimant has "the burden of proving that a voluntary quit was for good cause attributable to the employer pursuant to Iowa Code section § 96.5(1). Since the employer has the burden of proving disqualification, and the claimant only has the burden of proving the justification for a quit, the employer also has the burden of providing that a particular separation was a quit. The Iowa Supreme Court has thus been explicitly, "the

employer has the burden of proving that a claimant's department from employment was voluntary." *Irving v. Employment Appeal Board*, 883, NW 2d 179, 210 (Iowa 2016).

Quit not shown: 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 quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). The employer has the burden of providing that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5.

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.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the claimant's testimony, combined with written evidence, is more credible than the employer. The administrative law judge is not persuaded the claimant operated a voluntary choice to end the employment on June 30, 2019.

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). In this case, the claimant did not have the option of remaining employed nor did she express intent to terminate the employment relationship.

Rather, the claimant began employment as functional family therapist in August 2017. In February 2019, she expressed unhappiness about the lack of available work being offered and threatened to leave if things did not change. Her feelings were later validated by the employer telling the claimant and employees the contract for functional family therapists would end June 30, 2019. The claimant proactively then accepted a position as a brief intensive family services counselor effective April 2019. The employer later learned the original contract for functional family therapists would be renewed past June 30, 2019 and the services related to brief intensive family services would be ending June 30, 2019. Effective June 30, 2019, the claimant could no longer continue working in brief intensive family services due to a lack of work.

Accordingly, the administrative law judge concludes the claimant's separation is not disqualifying under Iowa law. Benefits are allowed, provided she is otherwise eligible. Because the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

DECISION:

The July 29, 2019 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision is affirmed. The claimant was laid off due to a lack of work. Benefits are allowed, provided she is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn