

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SARAH A ZIRKLE
Claimant

ENERIC PETROLEUM CORP
Employer

APPEAL 16A-UI-05336-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/17/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the May 5, 2016, (reference 01) unemployment insurance decision that denied benefits based upon her voluntarily quitting without good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on May 24, 2016. Claimant, Sarah A. Zirkle, participated personally. Employer, Eneric Petroleum Corp., participated through Human Resource Liaison Morae Metcalf. Exhibit 1 was admitted.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a Commissions Coordinator from December 9, 2013 and was separated from employment on April 14, 2016. Claimant's immediate supervisor was Jessica Ring. Her job duties included handling collection of past due debt from clients; handling reports based on collections and debit balances from clients; processing commission payments to clients; posting commissions to client accounts; and correspondence with clients.

On December 28, 2015, claimant had a medical issue arise that was not work related. She was off of work from December 28, 2015 until April 4, 2016. This leave was covered under the Family and Medical Leave Act ("FMLA"). Claimant's FMLA leave expired on March 11, 2016, however claimant was not able to come back to work at that time. The claimant and employer agreed to extend her leave of absence until April 4, 2016. Claimant had provided a doctor's note from her physician that she was able to work as of April 4, 2016 with no restrictions.

Claimant came back to work on April 4, 2016 and worked the full day. She worked only a partial day on April 5, 2016. Claimant was then absent from April 5, 2016 through April 14, 2016. Her

absences were due to an illness she had suffered which stemmed from a medical procedure she had completed at the end of March of 2016. This illness was not work related and unrelated to the original reason she began her FMLA leave. Claimant properly reported each absence from April 5, 2016 through April 14, 2016 to her supervisor, Jessica Ring. She did this through email correspondence.

The employer's human resource department, through Ms. Metcalf and another staff member, attempted to reach the claimant on three separate occasions. The purpose of the communication was to inquire whether or not claimant was going to be able to return to work due to her current illness. These communications were via telephone message and email correspondence.

Claimant's cellular telephone was not working properly during this time. She communicated this to employer. Claimant did not have a landline to use to call the employer. Claimant's husband had a cellular telephone but worked during the daytime hours. Claimant did respond to Ms. Metcalf's email on April 11, 2016 stating that she was ill. Ms. Metcalf sent an email to claimant asking when a good time to speak to her would be and she responded maybe April 13, 2016 at 4:15 p.m. Ms. Metcalf then tried to call the claimant at that date and time but she was not available to be reached. Following this missed meeting Ms. Metcalf drafted a letter stating that claimant was being discharged from employment due to the fact that she was not at work and they were unable to communicate with her. This letter was dated and mailed on April 13, 2016.

This letter stated in part:

"After careful consideration Cambridge Investment Research has decided to end your employment due to the need for additional leave with an unknown return date after exhaustion of protected leave under the Family Medical Leave Act and accrued paid time off benefits. We have attempted to contact you on three separate occasions and have been unable to reach you. Please review the enclosed letter outlining your final paycheck and benefits. Your department supervisor will mail any personal items left at your work station. Once you have been released to full duty and can perform the essential duties of an open position we would welcome you to apply at www.joincambridge.com. If your absence was due to circumstances beyond your control or if there is any other information you feel we need to know please call me ... to schedule an appeal meeting. If we do not hear from you within seven business days we will consider the matter closed."

The following day on April 14, 2016 claimant emailed Ms. Metcalf at 11:27 a.m. that she would not be able to return to her position with the employer. See Exhibit 1. This email occurred prior to claimant receiving the April 13, 2016 letter in the mail from the employer and learning of the employer's intent to discharge her. Claimant did not contact the employer at any time after receipt of the letter to request an appeal meeting or present any further information to the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

First it must be determined if claimant voluntarily quit or was discharged from employment. Claimant contends that she was discharged because the letter was written and mailed to her on the day prior to her quitting her employment through an email to Ms. Metcalf.

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.

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).

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).

In this case it is clear that claimant formed the intent to quit and carried out that intent by sending the Ms. Metcalf an email on April 14, 2016 at 11:27 a.m. that she was not going to return to work. See Exhibit 1. However, the question becomes whether or not claimant was discharged prior to her April 14, 2016 email when Ms. Metcalf put the April 13, 2016 letter in the mail to claimant.

It is undisputed that claimant did not receive or know that Ms. Metcalf had intended to discharge her when she wrote and sent the email to her dated April 14, 2016. Claimant had not yet received the letter as it had just been mailed the previous day. In order to voluntarily quit a claimant must carry out their intent with an overt act that is *communicated* in some fashion to the other party. Similarly, in order to discharge an employee from employment an employer must carry out that intent with an overt act that is *communicated* to the other party. Otherwise, if there is no communication, by action or inaction, that intent is not carried out.

While the employer clearly formed its intent to separate claimant from employment the day prior to claimant's email, that intent had not yet been communicated to claimant because she had not yet received the correspondence. Claimant, however, had formed her intent to separate from employment on or before April 14, 2016 and had communicated her intent by email when it was sent and received by Ms. Metcalf at 11:27 a.m. Because claimant's communication was received by the employer first, I find that claimant voluntarily quit prior to being discharged.

Alternatively the letter that was mailed to claimant was a conditional discharge. While the employer stated it was ending claimant's employment it did give claimant a seven business day window in which to contact the employer to discuss any mitigating factors. Once those seven business days passed and no further communication was made on behalf of claimant, her discharge was final. Claimant's email quitting her employment was made during that seven business day timeframe. In any event, this case should be analyzed as a voluntary quit.

Claimant contends that there were two reasons for her voluntary quit. First, her health issues prevented her from continuing to work. Claimant's health issues stemmed from a non-work-related injury or illness. At the time she quit on April 14, 2016 she had not fully recovered to be able to return to work from her newly developed illness.

Iowa Code § 96.5(1)d 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:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

When claimant quit on April 14, 2016 she had not been released to return to full work duties due to her second medical issue which occurred after her first release to return to work. The employer is not obligated to accommodate a non-work-related medical condition or illness. Accordingly, the separation on this basis is without good cause attributable to the employer.

Claimant's second reason for quitting her employment was due to the comments made by her supervisor and the comments she overheard from Human Resources Department workers. Claimant contends that she quit due to intolerable or detrimental working conditions.

Iowa Admin. Code r. 871-24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (4) The claimant left due to intolerable or detrimental working conditions.

Claimant's supervisor yelled at her on a couple of occasions for not completing her work correctly and in a timely fashion. Her supervisor did not use any profanity during these conversations but her voice was raised. Claimant could not remember any specific comments that the supervisor made to her but the comments in general made her feel uncomfortable. Claimant believed her supervisor was picking on her and bullying her. She made a complaint about her supervisor to the Human Resources Department in January of 2016 but no investigation was conducted. Claimant also believed that the job was too stressful, had too much drama and was no longer a good fit for her.

Claimant overheard co-workers who worked in the Human Resources Department making fun of previous employees who had been discharged from employment. This conversation was not directed at claimant and occurred in one of the worker's offices.

Iowa Admin. Code r. 871-24.25(22) and (21) provide:

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:

(22) The claimant left because of a personality conflict with the supervisor.

(21) The claimant left because of dissatisfaction with the work environment.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). While claimant's leaving the employment may have been based upon good personal reasons, claimant has not met her burden of proof to establish that her leaving was for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The May 5, 2016, (reference 01) unemployment insurance decision denying benefits is affirmed. Claimant voluntarily left the employment 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.

Dawn R. Boucher
Administrative Law Judge

Decision Dated and Mailed

db/css