

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TAMARA L HOWE
Claimant

LEXINGTON SQUARE LLC
Employer

APPEAL 15A-UI-08433-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/24/15
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 filed an appeal from the July 23, 2015, (reference 02) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on August 19, 2015. The claimant participated with Katrina M. Phillip, attorney at law. The employer participated through Tami Elder. Beth Printy also testified for the employer. No documents were offered or admitted into evidence.

ISSUE:

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the 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: The claimant was hired as a full-time registered nurse and was separated from employment as a part-time data entry analyst on July 2, 2015.

The claimant was hired a full-time registered nurse (RN). Retaining her nursing license was a condition of employment, and in March 2015, the claimant's license was revoked. As of the hearing, it had not been reinstated. The employer understood the claimant needed income but could not permit her to perform work as a nurse. The employer offered the claimant an opportunity to retain employment, in the capacity as a data entry specialist, with no guarantee of hours, but the same rate of pay. The claimant accepted the position and worked for three months as a data entry analyst until her separation.

Before separation, the claimant confronted the employer about her schedule, because she was not receiving full-time hours and was informed by the employer that they could only schedule her available hours, which may not be full time, because she did not have a valid license. On July 2, 2015, the claimant spoke with Ms. Printy, reiterating her frustrations and said she could not continue with the lack of hours. The claimant most recently had worked 32 hours over a

two-week period, rather than the 80 hours as she had as a nurse for the same time frame. Ms. Printy did not tell the claimant she was fired, and explained to the claimant she would lose her health insurance if separation occurred. The claimant was "sure I was terminated" based on the conversation and did not return to perform future work. Had the claimant not resigned, the employer would have allowed the claimant to continue working in data entry, until she could resolve the nursing license issue.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged but voluntarily left the employment without good cause attributable to the employer.

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 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 Admin. Code r. 871-24.25(27) 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 section 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 section 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:

(27) The claimant left rather than perform the assigned work as instructed.

The employer did not discharge the claimant when she lost her nursing license or at the time of the conversation with Ms. Printy on July 2, 2015. Rather, the employer attempted to provide the claimant some work, as a data entry specialist, so she could earn some income as she worked through her license revocation. The employer did not guarantee the claimant a set schedule. The claimant acquiesced to this change, by accepting the position and continuing to perform under the new schedule and title for three months before resigning.

The claimant initiated the final conversation that triggered the separation by stating she could not continue performing work with the existing schedule. During the claimant's final conversation with the employer, the claimant was not told verbally or in writing that the employer intended to sever the relationship. In response to the claimant's statement that she could not continue performing work based on the lack of hours, the employer did discuss the implications of separation with the company for the claimant. From these comments, the claimant "was sure" she was discharged. 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). Based on the evidence presented, the administrative law judge concludes that the claimant was not discharged but voluntarily quit her job without good cause attributable to the employer, and benefits are denied.

DECISION:

The July 23, 2015, (reference 02) unemployment insurance decision is affirmed. The 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.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/pjs