

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELIA O'CONNELL
Claimant

APPEAL NO: 14A-UI-00355-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROADWAY CORPORATION
Employer

OC: 12/15/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Angelia O'Connell (claimant) appealed an unemployment insurance decision dated January 6, 2014, reference 02, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Broadway Corporation (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 February 5, 2014. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate.

ISSUE:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time clerk/cashier from October 27, 2012 through December 16, 2013, when she was told to find a different job. She had no intent to quit and was fired after she asked for more hours.

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 or if the employer discharged her for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

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 did not exhibit the intent to quit and did not act to carry it out. Since the claimant did not have the requisite intent necessary to sever the employment relationship so as to treat the separation as a "voluntary quit" for unemployment insurance purposes, it must be treated as a discharge.

It is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1). The claimant was discharged on December 16, 2013, after she asked for more hours. Her separation from employment was not due to any misconduct on her part nor did she quit her job. The claimant is qualified to receive unemployment insurance benefits, provided she is otherwise eligible.

DECISION:

The unemployment insurance decision dated January 6, 2014, reference 02, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css