

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**JASMINE CARTER**  
Claimant

**ADVANCE SERVICES, INC.**  
Employer

**APPEAL 21A-UI-09833-WG-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/05/20  
Claimant: Appellant (4R)**

---

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 March 29, 2021, (reference 06) unemployment insurance decision that denied benefits based upon her voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on June 18, 2021. The claimant, Jasmine Carter, participated personally. The employer, Advance Services, Inc., participated through Melissa Lewien. The employer offered Exhibit A, which was received into the evidentiary record.

**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: The employer, Advance Services, Inc. is a temporary employment firm. Claimant, Jasmine Carter, worked for Advance Services, Inc. at its customer's location, Fusion, Inc. Claimant began working for the employer on March 3, 2020 and last worked for the employer on August 10, 2020. The employer considered her date of separation to be August 20, 2020.

On August 10, 2020, claimant was sent home from work due to persistent symptoms with her allergies. The employer's customer was concerned about Covid-19 spread and sent claimant home. On that same date, a derecho moved through Iowa causing widespread wind damage. The location where claimant worked, Fusion, Inc., sustained structural damage and was closed. No work was available to claimant after August 10, 2020 at Fusion, Inc.

Claimant testified that power was out and phone lines were down in Cedar Rapids after the derecho. Claimant testified that she was aware of and received a policy requiring her to check in with the employer within three days when her work assignment ended. She went to Iowa City after the derecho hit and testified that she attempted to check in with her employer on August 11, 2021. She left a message on its phone system but assumes the message was not received.

She did not attempt to present to the employer's office location to request reassignment. Instead, she waited for contact by the employer.

On August 17, 2021, Angel from the employer did contact claimant by phone. Claimant testified that she told Angel she had been trying to make contact but that the phone lines were down. She also testified that Angel contacted her on his personal cell phone. Angel advised claimant that Fusion, Inc. had structural damage and work was not available.

Employer records document that claimant called Advance Services on September 4, 2020 at 12:06 p.m. to inquire about work at Fusion, Inc. The employer returned that call on the same date and advised that work was not available at Fusion, Inc. However, the employer offered claimant alternate work at another client's location in Marion, Iowa. Claimant did not immediately accept the offer of work extended by the employer. Claimant had issues related to her transportation and testified that she was not able to work at that time.

Claimant was supposed to return the employer's call to give an indication of whether she would accept work at the Marion location. However, claimant did not return that call. In fact, claimant made no contact with the employer until February 16, 2021 and that call was for purposes of requesting her paystubs for past employment, not for purposes of securing a new assignment. Claimant testified that she has not returned to work and has not been able to return to work since the derecho on August 10, 2021 due to ongoing personal issues.

I find that claimant did attempt to make contact with the employer within three days of the derecho. However, work was offered to Ms. Carter on September 4, 2021. Claimant refused that work. She also testified that she has not been able to return to work since August 10, 2021.

I specifically find that the employer had continuing work available and that work was offered to claimant on September 4, 2021. Claimant was not going to be discharged or laid off for lack of work. Claimant failed to accept the comparable work offered to her on September 4, 2021, made no further contact to seek or request assignment, and effectively abandoned her job. Ultimately, I find that claimant voluntarily quit her employment.

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

For the reasons that follow, the administrative law judge concludes as follows:

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).

First it must be determined whether claimant quit or was discharged from employment. 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). 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).

A claimant who confronts his employer and demands that he be discharged and is subsequently discharged actually quits his employment. Job insurance benefits "are not determinable by the course of semantic gymnastics." *Frances v. IDJS*, (Unpublished Iowa App 1986). Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without good cause attributable to the employer. *LaGrange v. Iowa Department of Job Service*, (Unpublished Iowa Appeals 1984).

In this case claimant had an intention to quit and carried out that intention by failing to accept the employer's new assignment for work and by failing to call back in to the employer for additional assignments between September 4, 2020 and February 16, 2021. Essentially, she

declined or refused to come to work or accept a new work assignment at any time after August 10, 2020. As such, claimant abandoned her job and voluntarily quit.

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).

In this case, no work was offered or available to claimant from August 11, 2020 through September 3, 2020. Claimant was effectively laid off during this period for lack of work. However, she testified that she was not able to work during this period of time or to the present. Claimant's ability and availability for work during this period of time are not disputed issues for this hearing. Therefore, this issue must be remanded to be determined for the period from August 11, 2020 through September 3, 2020.

However, as of September 4, 2020, the employer offered claimant comparable work. For personal reasons, claimant refused to come back to work. 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 § 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:

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

Claimant's leaving the employment was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied as of September 4, 2020.

**DECISION:**

The March 29, 2021, (reference 06) unemployment insurance decision is modified in favor of claimant with respect to the period from August 11, 2020 through September 3, 2020. Claimant was laid off from work during this period of time due to unavailability of work. However, the issue of claimant's ability and availability for work have not been determined for this period of time. The claim is remanded for determination of claimant's ability and availability to work during the period between August 11, 2020 and September 3, 2020.

As of September 4, 2020, claimant was offered work and refused the work assigned. Claimant effectively abandoned her job and voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld after September 3, 2020 in regards to this employer until such time as claimant is deemed eligible.



---

William H. Grell  
Administrative Law Judge

July 06, 2021  
Decision Dated and Mailed

wg/mn