

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMBER R OCASIO**  
Claimant

**APPEAL NO. 10A-UI-07745-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ELMWOOD COUNTRY CLUB**  
Employer

**OC: 04/18/10**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 19, 2010 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on July 15, 2010. Claimant participated. Employer participated through Larry Way, Dennis Buffington, and Hope Harvey. Employer's Exhibit 1 was admitted to the record.

**ISSUE:**

The issue is whether claimant quit the employment without good cause attributable to the employer or if she was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a server/bartender and was separated from employment on April 13, 2010. Her last day of work was March 22, 2010. She became ill and did not provide medical documentation or return to work after a family member (her sister) told her she was going to be fired by letter from the employer. She did not receive such a letter from the employer and did not communicate directly with the employer to verify the status of her employment. Employer did not have a current phone number for claimant. Had she maintained communication, continued work would have been available.

**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.

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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). 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.

Since claimant did not follow up with management personnel and her assumption of having been fired was erroneous, claimant's failure to continue reporting to work was an abandonment of her job. Benefits are denied.

**DECISION:**

The May 19, 2010 (reference 01) decision is affirmed. The claimant voluntarily left 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.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs