

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTIAN M CORBIN
Claimant

APPEAL NO. 09A-UI-00800-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CIGARETTE OUTLET INC
Employer

**OC: 12/21/08 R: 04
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Kristian M. Corbin (claimant) appealed a representative's January 9, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Cigarette Outlet, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 4, 2009. The claimant participated in the hearing. Debbie Schnyder appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 30, 2008. She worked part time (approximately 28 – 30 hours per week) as a clerk in the employer's Clinton, Iowa store. Her last day of work was December 19, 2008.

On the night of December 19 while at work the claimant was having some problems with her boyfriend who had used the claimant's car and then been in an accident which he did not report to her. As a result of this incident, the claimant summoned the police. The claimant became very upset and took more than the recommended dosage of medication she was prescribed for anxiety. When the police arrived the claimant was suffering impairment as a result of the excessive medication. When she reported the over dosage to the police, they indicated they were going to take her to the hospital.

The claimant's supervisor, Ms. Schnyder, was also at the store that evening and also spoke with the police. When the police indicated they were going to take her to the hospital, Ms. Schnyder indicated that as it was uncertain how long the claimant might be hospitalized or unable to work,

she needed to get the store key back from the claimant. The police officer asked Ms. Schnyder whether the claimant was being discharged, and while Ms. Schnyder indicated she might be reviewing the claimant's status as a result of the events of the evening, she was not at that time discharging the claimant. The claimant then retrieved the store key and turned it over to Ms. Schnyder.

The claimant had been scheduled to work on December 20 at 7:45 a.m. The claimant contacted the employer at approximately 8:15 a.m. to report she was going to be late; she was told she should just come in on Monday, December 22, to discuss the events of December 19. However, at about 8:30 a.m., the claimant sent a text message to the store manager informing her that she was quitting and not returning to work.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that her separation was not “voluntary” as she had not desired to end the employment; she argues that it was the employer's action in taking the key from her on the evening of December 19 which triggered the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 871 IAC 24.25 provides that, 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 rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as ceasing reporting for work when she believes she has been discharged but has not been told she in fact has been discharged. 871 IAC 24.25.

The claimant asserts that she did not call the employer on the morning of December 20, was not told to come in on December 22, and that she did not send a text message to the store manager indicating she was quitting. However, by the claimant's own admission her mind was not completely clear from the medication overdose until later on December 20, and her recollection of the events is not as credible as the employer. Further, other than having been asked for her key, the employer said nothing to her upon which her assumption of being discharged could be well-founded. At the least, the claimant's failure to contact the employer to determine her status leaves her as being responsible for resolving the ambiguity in her employment status.

The claimant indicated to the employer she was not returning to work and did not seek to return to work to determine whether she did still have a job; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's January 9, 2009 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of December 20, 2008, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css