

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MEGAN R LANGERAK
Claimant

APPEAL NO. 18A-UI-09287-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHARLES GABUS MOTORS INC
Employer

OC: 08/12/18
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Megan Langerak filed a timely appeal from the August 28, 2018, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Langerak voluntarily quit on August 14, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on September 24, 2018. Ms. Langerak participated. Beverly Maez of Employers Unity represented the employer and presented testimony through Kelsey Gabus McBride, John "JP" Phillips, and Travis Bergeson. Exhibits 1, 2 and A were received into evidence.

ISSUE:

Whether Ms. Langerak separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Megan Langerak was employed by Charles Gabus Motors, Inc, d/b/a as Toyota of Des Moines, as a full-time receptionist from September 2017 until August 17, 2018. Travis Bergeson, Service Manager, was Ms. Langerak's supervisor. At the start of the employment, Ms. Langerak's receptionist duties primarily included answering the phone, receiving payment from customers and dispatching shuttle drivers. The employer has set the pay for general receptionist duties at \$14.00 per hour. Very soon after Ms. Langerak began the employment the employer provided Ms. Langerak with enhanced duties that included closing warranty repair orders at the end of the business day. In connection with the addition of these duties, the employer boosted Ms. Langerak's hourly wage to \$15.00 and Ms. Langerak's established work hours became 9:00 a.m. to 6:00 p.m.

In May 2018, Ms. Langerak's child care arrangements changed in that she no longer had an afternoon babysitter available every day to collect her young child from daycare prior to the daycare's 5:00 p.m. closing time. Ms. Langerak commenced leaving work early, at 4:30 p.m., on those days when her sister was not available to collect her child from daycare by the 5:00 p.m. closing time.

On August 7, 2018, Ms. Langerak notified the employer that she would no longer be working beyond 4:30 p.m. Ms. Langerak decided that the employer no longer needed someone to close out the warranty repair orders at the end of the day. The employer saw a continued need for someone to perform those duties during the established work hours.

In light of Ms. Langerak's decision to unilaterally change her work availability and duties, the employer proposed that Ms. Langerak return to performing general receptionist duties, commence an 8:00 a.m. to 4:30 p.m. work schedule, and return to the \$14.00 per hour wage that applied to receptionists performing general duties. Ms. Langerak declined the proposal in light of the \$1.00 hour decrease in pay. In connection with the August 14 meeting, Mr. Bergeson and Kelsey Gabus McBride, Human Resources Manager, issued a "Final Warning" to Ms. Langerak. Ms. Langerak elected to separate from the employment at that time. The employer continued to have work available for Ms. Langerak.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. Iowa Administrative Code rule 871-24.1(113)(c). A quit is a separation initiated by the employee. Iowa Administrative Code rule 871-24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See Iowa Administrative Code rule 871-24.25.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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(17) 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:

(17) The claimant left because of lack of child care.

Iowa Admin. Code r. 871-24.25(28) 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:

(28) The claimant left after being reprimanded.

The weight of the evidence in the record establishes a voluntary quit that was without good cause attributable to the employer. At the end of the employment, Ms. Langerak unilaterally changed her work hours and duties in connection with her lack of afternoon childcare assistance. The employer was under no obligation to acquiesce in the substantial changes initiated by Ms. Langerak. The employer proposed a reasonable compromise solution that returned Ms. Langerak to general receptionist duties, provided her with the work hours she desires, and returned her to the pay that would apply to a receptionist performing general receptionist duties. Ms. Langerak rejected the employer's proposal. The employer reasonably concluded Ms. Langerak's conduct and stated position to indicate an intention to separate from the employment. That separation occurred in the context of a "Final Warning" that memorialized the discussion that took place on August 14, 2018. Ms. Langerak is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Langerak must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The August 28, 2018, reference 01, decision is affirmed. The claimant voluntarily quit the employment on August 14, 2018 without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs