

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GLORIA D HUGHES
Claimant

APPEAL NO. 08A-UI-11545-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ASTORIA INDUSTRIES OF IOWA INC
Employer

**OC: 11/16/08 R: 03
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 9, 2008, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on December 23, 2008. Claimant participated. Employer participated through Tiffany Phillips.

ISSUE:

The issue is whether 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 mold preparation worker and was employed from July 16, 2007 until November 18, 2008 when she quit after a meeting about a reprimand for attendance since she had recently been working only 32 hours out of 40-hour week. Her last day of work was November 12 and she had left work early without notifying her supervisor because she could not find him. Phillips pulled her timecard, which meant that she wanted to speak with claimant about a disciplinary matter, but not necessarily a discharge from employment. Since claimant had been on probation for attendance issues earlier in the year and she had relapsed in her attendance efforts since July, Phillips intended to give her a warning, place her on a two-day suspension, put her on a 90-day probation, and possibly move her to part-time status. Claimant disagreed with the warning and refused to sign it, for which she would not be fired, and did not ask Phillips for an opportunity to write a response to the warning. Instead she told Phillips she was taking the disciplinary action as being fired. Phillips reiterated that she was not fired and twice told claimant she would be willing to waive the two-day suspension and she should return to work and Phillips would speak with her supervisor about his suggestion that she work part-time if she is unable to consistently maintain a full-time schedule. Claimant again said she thought this meant she was fired and left the property.

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.

871 IAC 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 § 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:

(28) The claimant left after being reprimanded.

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 or walk off the job, the separation is considered a quit without good cause attributable to the employer.

Since Phillips told claimant at least twice that she was not fired, the signature on the reprimand was to indicate receipt and not agreement, claimant did not allow Phillips a chance to discuss options with the supervisor or modify the discipline, but left the premises, her actions clearly constituted an abandonment of her job. Benefits are denied.

DECISION:

The December 9, 2008, 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css