

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ROXANNE S CLAYTON**  
Claimant

**APPEAL 16A-UI-13204-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REM IOWA COMMUNITY SERVICES INC**  
Employer

**OC: 10/30/16  
Claimant: Appellant (1)**

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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 November 30, 2016 (reference 01) unemployment insurance decision that denied benefits based upon claimant voluntarily quitting work. The parties were properly notified of the hearing. A telephone hearing was held on January 4, 2017. The claimant, Roxanne S. Clayton, participated personally. The employer, Rem Iowa Community Services Inc., participated through witness Nicole Crockett.

**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: Claimant began her employment on July 30, 2014. Her last day physically worked on the job was July 26, 2016. Claimant worked full-time as a direct support professional. Jackie Harper was claimant's immediate supervisor.

Claimant sustained an injury to her ankle. Her injury was not work-related. On Thursday, July 28, 2016 claimant texted Ms. Harper stating that she was quitting due to her ankle and that she didn't want any absences to count against her. Claimant did not request a voluntary leave of absence or any other type of leave available to her. Claimant did not return to work after she sent Ms. Harper the text message.

Claimant had received previous discipline regarding her absences. Claimant was not going to be discharged. There was continuing work available to her if she had not quit.

**REASONING AND CONCLUSIONS OF LAW:**

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

The decision in this case rests, at least in part, upon the credibility of the parties. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* The administrative law judge concludes that Ms. Crockett's testimony is more credible than that of the claimant.

While the employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). Claimant texted Ms. Harper stating that she was quitting. The separation was a voluntarily quit and not a discharge from employment.

Iowa Code § 96.5(1)d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

(a) Obtain the advice of a licensed and practicing physician;

- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

Further, in this case 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 medical condition was not work-related. Claimant never returned to offer her services to the employer. Accordingly, the separation from employment was without good cause attributable to the employer and benefits must be denied.

**DECISION:**

The November 30, 2016 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit her employment without good cause attributable to employer. Unemployment benefits are withheld in regards to this employer until such time as claimant is deemed eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

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