

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTINA L TOMLINSON
Claimant

AHOY CORPORATION
Employer

APPEAL 15A-UI-12901-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/30/15
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-Finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the November 13, 2015 (reference 05) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 10, 2015. Claimant did not participate. Employer participated through Tim Hoy.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the Agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a soda fountain operator from December 2014 and was separated from employment on February 5, 2015; when she quit.

On February 5, 2015, claimant told her manager that she quit. Claimant did not give the employer a reason why she quit. Claimant did not return for any of her future scheduled shifts. The employer is not aware of any incidents that would have caused claimant to quit. There was work available for claimant had she not quit.

The administrative record reflects that claimant has not received unemployment benefits since filing a claim with an effective date of August 30, 2015. The administrative record also establishes that the employer did participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer. Benefits are denied.

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.

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 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:

(27) The claimant left rather than perform the assigned work as instructed.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. On February 5, 2015, claimant told her manager she quit and she did not return for any of her next scheduled shifts. Claimant did not give the employer reason why she quit.

Claimant's leaving the employment without reason and the failure to return to work renders the separation job abandonment without good cause attributable to the employer. While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good cause reason attributable to the employer according to Iowa law. Benefits must be denied.

The employer participated in the fact-finding interview but there was no overpayment because benefits have not been paid on this claim.

DECISION:

The November 13, 2015 (reference 05) unemployment insurance decision is reversed. Claimant voluntarily left the 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. There is no overpayment because benefits have not been paid on this claim. The employer did participate in the fact-finding interview.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

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