

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CAROL J GIBSON**  
Claimant

**APPEAL NO: 06A-UI-09123-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PLEASANTVILLE CARE CENTER LLC  
PLEASANTVILLE CARE LIVING CENTER**  
Employer

**OC: 08-13-06 R: 03  
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Leaving  
Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the September 5, 2006, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on September 26, 2006. Claimant participated and was represented by Meghan Gavin, Attorney at Law. Employer participated through Tammy Little and Lois Fry.

**ISSUE:**

The issue is whether claimant quit the employment without good cause attributable to the employer or was discharged for reasons related to job misconduct.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time dietary aide from December 28, 1998 until August 8, 2006 when she was discharged. Lois Fry, dietary manager/environmental supervisor, and activity director Mary Long, had a meeting with claimant about a sanitation issue with ice during an activity director. Before she could explain why the meeting was being held, claimant shook her finger at Fry and began yelling at her saying she was “tired of the harassment,” did not want Long present and employer would hear from her attorney. Claimant walked off the job at 1:15 p.m. before her shift ended at 1:30 p.m. She reported to work the following day and was told her employment was terminated since she walked out the day before. Had she stayed she would have received a three-day suspension.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not discharged but voluntarily left her 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, the separation is considered a quit without good cause attributable to the employer.

Since claimant walked off the job before the end of her shift after employer attempted to reprimand her, she is considered to have quit her job. Employer's refusal to allow her to continue working the following scheduled work day was not a discharge but a refusal to rescind her job abandonment the previous day. Benefits are denied.

**DECISION:**

The September 5, 2006, 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.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs