

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMIE L JENSEN**  
Claimant

**APPEAL NO. 12A-UI-10776-JT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HGI LAKESIDE LLC**  
Employer

**OC: 08/05/12**  
**Claimant: Appellant (5)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Jamie Jensen filed a timely appeal from the August 28, 2012, reference 01, decision that denied benefits. Ms. Jensen requested an in-person hearing. After due notice was issued, an in-person hearing was held in Creston on November 15, 2012. Ms. Jensen participated and presented additional testimony through her husband, William Jensen. Carol Eckels, Human Resources Manager, represented the employer and presented additional testimony through Jackie Hermanstorfer, Security Supervisor. Exhibits Two through Six were received into evidence.

**ISSUE:**

Whether Ms. Jensen separated from the employment for a reason that disqualifies her for unemployment insurance benefits. The administrative law judge concludes that Ms. Jensen voluntarily quit the employment without good cause attributable to the employer and is disqualified for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Jamie Jensen was employed by HGI Lakeside, L.L.C., as a full-time security supervisor until August 2, 2012 when she voluntarily quit midway through her scheduled shift. Ms. Jensen had been a security supervisor since 2007 and had been with the company since 2006. Ms. Jensen's supervisors included Jackie Hermanstorfer. Ms. Hermanstorfer has two positions with the employer: Security Supervisor and Emergency Medical Technician (EMT). Max Finn was another Security Supervisor who functioned as Ms. Jensen's immediate supervisor. Ms. Jensen's regular work hours were 2:30 p.m. to 10:30 p.m.

An hour into her shift on August 2, 2012, Ms. Jensen received a telephone call from her husband. Her husband advised that his grandfather had taken a turn for the worse at the nursing home where he resided, was expected to soon pass away, and that the family was going to gather at the nursing home the next day to spend time with the grandfather while he was still lucid. Mr. Jensen wanted Ms. Jensen to join him to provide emotional support. A short while later, Ms. Jensen mentioned her situation to Security Supervisor Jackie Hermanstorfer.

Ms. Hermanstorfer referred Ms. Jensen to Security Manager Shari Frost. At about 6:00 p.m., Ms. Jensen asked her husband to contact Ms. Frost about Ms. Jensen's desire to have the next day off. Ms. Jensen did not contact Ms. Frost directly. Mr. Jensen had worked for the employer until 2010. After receiving the call from Mr. Jensen, Ms. Frost had Ms. Hermanstorfer review the posted schedule. Ms. Jensen was scheduled to supervise security during the next day's evening shift. The next day was a Friday, a busy shift for the employer. Though the employer was short-staffed, and would be short-staffed even if Ms. Jensen worked the next day, Ms. Frost instructed Ms. Hermanstorfer to tell Ms. Jensen that she could have the next day off if she could find a replacement.

At about 6:30 p.m., Ms. Hermanstorfer approached Ms. Jensen in the security office to carry out Ms. Frost's instructions. Ms. Jensen became angry and upset at the suggestion that she find a replacement to cover her shift the next day. When Ms. Hermanstorfer suggested that Ms. Jensen ask Shift Manager Max Finn to cover for her, Ms. Jensen replied, "Like that would really happen." Mr. Finn was scheduled to start vacation time off the next day. When Ms. Hermanstorfer mentioned that Ms. Jensen could ask another security supervisor, Dennis, Ms. Jensen replied, "That is not going to happen." Ms. Jensen and Dennis did not get on well. When Ms. Hermanstorfer reiterated that Ms. Frost said Ms. Jensen could take the time off if she found a replacement, Ms. Jensen asserted that she did not need to find a replacement because Ms. Hermanstorfer would be there the next day. Ms. Hermanstorfer told Ms. Jensen that both she and another supervisor would be working the day shift and would be leaving at 6:30 p.m. the next day.

Ms. Jensen became increasingly upset and asserted it should not matter whether she had a replacement to cover her shift. Ms. Jensen asserted that the employer preached about family values, but was unwilling to help her. Ms. Hermanstorfer told Ms. Jensen to stop raising her voice. Ms. Jensen disregarded the directive. Ms. Jensen then told Ms. Hermanstorfer, "Why don't you just fucking shut up and leave." Ms. Jensen pointed to the door of the security office. Ms. Hermanstorfer was taken aback by the utterance. After a moment, Ms. Hermanstorfer pointed out that she was only conveying Ms. Frost's position that Ms. Jensen needed to find a replacement if she wanted to take the next evening off. Ms. Jensen then said, "Then I'm fucking leaving." Ms. Hermanstorfer repeatedly asked Ms. Jensen to think about her job and the consequences to job if she walked off during a shift. This did not deter Ms. Jensen, who reasserted that she was "fucking leaving." As she departed, Ms. Jensen made a flip remark about not forgetting to clock out before she left. Ms. Jensen left hours before the scheduled end of her shift. Though Mr. Finn was Ms. Jensen's primary supervisor, and was at the workplace at the time, Ms. Jensen left in anger without contacting Mr. Finn with her concerns.

On the morning of August 3, Ms. Jensen contacted the employer to advise that she would not be at work that afternoon, that she was going to take the day off due to a family emergency. Ms. Jensen made that call shortly after she made an unsuccessful attempt to contact Ms. Frost. Ms. Jensen appeared to hope or expect that the employer would overlook the events of the previous day. Ms. Hermanstorfer was in the security dispatch area and took the call from Ms. Jensen. Ms. Hermanstorfer had Ms. Jensen hold while Ms. Hermanstorfer contacted Ms. Frost. Ms. Frost directed Ms. Hermanstorfer to take Ms. Jensen's call in information.

At around noon on August 3, Carol Eckels, Human Resources Manager, telephoned Ms. Jensen. Ms. Eckels asked Ms. Jensen why she had called in an absence from her August 3 shift after walking off the job on August 2. Ms. Jensen said she had not heard from the employer and had not been 100 percent certain that her employment had ended as a result of her departure the previous day. Ms. Eckels told Ms. Jensen that the employer deemed

Ms. Jensen to have voluntarily quit as a result of Ms. Jensen's walking off the job the previous day.

#### **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. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 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 871 IAC 24.25.

In light of the circumstances of Ms. Jensen's early departure, the employer reasonably concluded on August 2 that Ms. Jensen had voluntarily quit the employment. There was no legitimate reason for Ms. Jensen to leave work early on August 2. Ms. Jensen left in anger in response to the employer's expectation that she take steps toward securing someone to cover her shift the next day. Ms. Jensen in fact took no action toward attempting to secure someone to cover her shift the next day. The employer's request that Ms. Jensen attempt to find someone to cover her shift was not an unreasonable request. Prior to Ms. Jensen's early departure on August 2, Ms. Hermanstorfer repeatedly advised Ms. Jensen that it would likely mean the end of her employment if she abandoned her shift. Ms. Jensen was a supervisor, not a rank-and-file employee, and her early departure negatively impacted the employer's operations. A reasonable person in Ms. Jensen position would understand that the unauthorized early departure under the attending circumstances would be interpreted by the employer as a voluntary quit. The fact that Ms. Jensen later calmed down and reconsidered did not alter that fact that employer reasonably interpreted her actions on August 2 as a voluntary quit. The weight of the evidence indicates a voluntary quit without good cause attributable to the employer.

Iowa Code section 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.

Because Ms. Jensen voluntarily quit the employment without good cause attributable to the employer, Ms. Jensen is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits.

Ms. Jensen would have been disqualified for benefits based on the separation even if the administrative law judge had found the separation to be based on a discharge rather than a quit. An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. Warrell v. Iowa Dept. of Job Service, 356 N.W.2d 587 (Iowa Ct.

App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority. Deever v. Hawkeye Window Cleaning, Inc. 447 N.W.2d 418 (Iowa Ct. App. 1989). The profanity and related conduct that Ms. Jensen directed at Ms. Hermanstorfer constituted misconduct in connection with the employment and would have disqualified Ms. Jensen for unemployment insurance benefits.

**DECISION:**

The Agency representative's August 28, 2012, reference 01, decision is modified as follows. The claimant voluntarily quit the employment 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, provided she is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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