

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CONNIE L SIEFKEN
Claimant

APPEAL 15A-UI-10527-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARSDEN BLDG MAINTENANCE LLC
Employer

**OC: 08/23/15
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 11, 2015, (reference 01) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on October 1, 2015. Claimant participated and was represented by Nick Cibula, Attorney at Law. Employer participated through human resources representative, Margurite Bernadino, and supervisor, Brian Padavich. Pixie Allan of Equifax/Talx represented the employer.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a first-shift general cleaner assigned at client AT&T from March 1, 2013, and was separated from employment on August 28, 2015, when she quit. On August 27 Padavich disciplined claimant by giving her a final written warning and moving her from first to second shift after she let unauthorized people into the client's building and secure server room. Surveillance video confirmed the allegation. Padavich had told her in April 2015, that she was not to allow anyone entrance into the building and that they must go through the security guards at the front entrance. He had also reminded her verbally multiple times since then. The employer's policy also instructs employees not to allow anyone access to client buildings. The move from first to second shift would allow her to continue working but not have to deal with anyone attempting to enter the building as deliveries are not made after that time. The following morning she sent him an e-mail stating that she quit due to a "hostile environment" but the most recent complaint was three weeks earlier and there were no allegations of anything more recent. Continued work was available.

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.

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(21), (22), (27) and (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 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:

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

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

(28) The claimant left after being reprimanded.

Iowa Admin. Code r. 871-24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

An employer has the right to allocate personnel in accordance with the needs and available resources. *Brandl v. Iowa Dep't of Job Serv.*, (No. ___-___/___-___, Iowa Ct. App. filed ___, 1986). While the circumstances might be considered a change in the contract of hire, the employer demoted claimant because she repeatedly allowed people access to the building rather than directing them to security guards. Since the history of security breaches would be considered misconduct due to repeated disregard of the employer's policy and prior verbal

warnings, the employer's action to move her to a different shift where that would not be a concern rather than discharge did not give the claimant a good-cause reason for leaving the employment.

DECISION:

The September 11, 2015, (reference 01) unemployment insurance decision is affirmed. 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs