

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

AUNDREA D ANDERSON
Claimant

HOOGLAND FOODS LLC
Employer

APPEAL 24R-UI-02319-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/26/23
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 21, 2023, (reference 01) that held claimant ineligible for unemployment insurance benefits due to a voluntary resignation without good cause attributable to the employer. After due notice, a hearing was scheduled for and held on January 18, 2024. The claimant did not participate in the hearing and a default decision was issued on January 23, 2024. The claimant appealed the decision to the Employment Appeal Board and on February 27, 2023 the Employment Appeal Board remanded the matter for a new hearing. The Iowa Workforce Development sent out new hearing notices to the parties at their addresses of record on March 7, 2024 scheduling the hearing for March 26, 2024. Claimant, Aundrea Anderson, participated personally. Employer, Hoogland Foods LLC, participated by District Manager, Jonathan Stuvenga. No exhibits were offered or admitted into evidence. The administrative law judge took official notice of the administrative record including the fact-finding documents.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did the claimant voluntarily quit without good cause attributable to the employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant began working for this employer on October 15, 2023 as a part-time delivery driver/shift lead. The claimant's immediate supervisor was Jonas Wommak. The last day the claimant physically worked for the employer was December 5, 2023. On December 4 or 5, 2023, the claimant texted Jonas Wommak to telling him to remove her from the system. She did not return to work after that date.

A few days before December 1, 2023, the employer received a complaint regarding a delivery the claimant had completed. One of the supervisors, Monica, had a discussion with the claimant about the delivery on December 1, 2023. After the claimant's discussion with Monica,

Jonathan Stuvenga, also had a discussion with the claimant. In the discussion, he told the claimant she was not being terminated. The claimant stated she wanted to go on a leave for the remainder of her pregnancy. Mr. Stuvenga told the claimant that a pregnancy leave was fine and that he would need a doctor's note when she was ready to return.

After texting Jonas Wommak on December 4 or December 5 asking him to remove her from the system, the claimant never attempted to return to work or submit a doctor's note of any kind. Continuing work was available had the claimant reported to work.

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(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.

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).

In this case, the claimant was never discharged from employment. Continuing work was available had she chosen to continue reporting to work. Even if the claimant took time away from work for a medical leave, the employer was allowing her to return to work with a doctor's note. The claimant sent a text message to her supervisor telling him to remove her from the system on December 4 or December 5, 2023. She then stopped reporting to work. She never returned to work and she never submitted a doctor's note in an attempt to return to work. While the claimant maintains she was discharged from employment by Monica on December 1, 2023, the employer's credible testimony was that the employer wanted the claimant to continue working and they were trying to accommodate the claimant to allow her time off to keep her on as an employee.

Iowa Admin. Code r. 871-24.25 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.

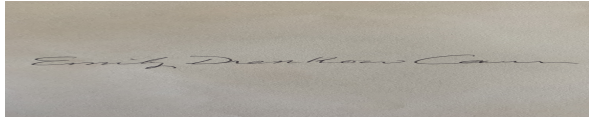
Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products 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).

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.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the findings of facts above show how the administrative law judge assessed the witness credibility.

In this case, the claimant left work rather than continuing to work. The claimant sent a text message to her direct supervisor telling him to take her out of the system. She then stopped reporting to work. The employer had been attempting to accommodate the claimant's request for time off work. The claimant never made an attempt to return to work or to provide a doctor's note allowing her to return to work. While claimant had her own reasons for leaving, no reasons were provided that amounted to good cause attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The December 21, 2023, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

A rectangular box containing a handwritten signature in cursive script, which appears to read "Emily Drenkow Carr".

Emily Drenkow Carr
Administrative Law Judge

March 27, 2024
Decision Dated and Mailed

ED/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave, Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.