

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MADISON N DRUECKER**  
Claimant

**FAREWAY STORES INC**  
Employer

**APPEAL 21A-UI-18192-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/06/21  
Claimant: Respondent (2)**

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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:**

On August 18, 2021, Fareway Stores Inc (employer/appellant) filed an appeal from the Iowa Workforce Development decision dated August 10, 2021 (reference 03) that allowed unemployment insurance benefits based on a finding claimant was dismissed from work on May 22, 2021 without a showing of misconduct.

A telephone hearing was held on October 8, 2021. The parties were properly notified of the hearing. Employer participated by HR Generalist Stephanie Rohrer. Assistant Grocery Manager Cass Minton participated as a witness for employer. Madison Druecker (claimant/respondent) participated personally. Her mother, Jodi Druecker, participated as a witness for claimant.

Employer's Exhibits 1-3 were admitted. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Was the claimant overpaid benefits? Should claimant repay benefits or should employer be charged due to employer participation in fact finding?
- III. Is the claimant eligible for Federal Pandemic Unemployment Compensation?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant's first day of employment was September 27, 2019. Claimant worked for employer as a part-time grocery clerk. Claimant's immediate supervisor was Minton. The last day claimant worked on the job was May 21, 2021. Claimant separated from employment at that time.

Minton noticed on May 21, 2021 that claimant was wearing a nose piercing during her work shift. This was a violation of employer's dress code. Claimant was aware of this policy. Minton approached claimant and told her she needed to remove the nose piercing. Claimant was not able to remove the piercing because it was stuck. Minton told claimant she needed to go home and could return once it was removed. Minton did not discharge claimant at that time. However, claimant understood the communication to mean she was discharged. She made no attempt to return to work or communicate with employer further after that date.

Claimant has not received benefits since the date of separation.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons set forth below, the decision dated August 10, 2021 (reference 03) that allowed unemployment insurance benefits based on a finding claimant was dismissed from work on May 22, 2021 without a showing of misconduct is REVERSED.

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 provides in relevant part:

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:

**(28)** The claimant left after being reprimanded.

**(33)** The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

“Good cause” for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp’t Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp’t Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

In this case, the claimant did not have the option of remaining employed nor did he express intent to terminate the employment relationship. Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp’t Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Employer has carried its burden of proving claimant’s departure from employment was voluntary. However, claimant has not carried her burden of proving the voluntary leaving was for good cause attributable to employer.

Claimant was directed to leave work due to a dress code violation. While the administrative law judge understands that claimant believed she was discharged, this belief was not reasonable based on the facts and circumstances present. Her failure to seek clarification on her work status or seek to return to work was also unreasonable and rendered the separation voluntary. This is akin to resigning after being reprimanded or due to a belief that her performance was not to the satisfaction of employer. These reasons are presumed to be without good cause and the administrative law judge finds the separation here was without good cause attributable to employer. Benefits are therefore denied.

Because claimant has not received benefits since the date of separation the other issues noticed need not be addressed.

**DECISION:**

The decision dated August 10, 2021 (reference 03) that allowed unemployment insurance benefits based on a finding claimant was dismissed from work on May 22, 2021 without a showing of misconduct is REVERSED. The separation from employment was disqualifying. Benefits are denied from the date of separation and continuing until claimant earns wages for insured work equal to ten times her weekly benefit amount, provided she is not otherwise disqualified or ineligible at that time.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
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Fax (515) 478-3528

October 14, 2021  
Decision Dated and Mailed

abd/mh

**Note to Claimant:**

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.