

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

MICHELE L DICKEY  
1744 TIPTON RD  
MUSCATINE IA 52761

CITY CARTON COMPANY  
3 E BENTON ST  
IOWA CITY IA 52240

Appeal Number: 05A-UI-07678-S2T  
OC: 08/01/04 R: 04  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit  
Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Michele Dickey (claimant) appealed a representative's July 19, 2005 decision (reference 04) that concluded she was not eligible to receive unemployment insurance benefits because she had voluntarily quit employment with City Carton Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 11, 2005. The claimant participated personally. The employer participated by Dawn McCalley, Human Resources Director, and Kim Hayes, Supervisor.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on May 10, 2005, as a full-time mustang and forklift operator. The claimant told the employer on her application that she knew how to drive a mustang but needed training on operating a forklift. Each day the employer told the claimant to drive the mustang. The claimant wandered off and found another employee to operate the mustang.

On June 10, 2005, the employer had a meeting with the claimant. The claimant indicated she was unhappy with her work and disliked operating the equipment. The claimant and the employer agreed the claimant was not suitable for the position and the claimant left work.

The testimony of the employer and claimant was conflicting. The administrative law judge finds the employer's testimony to be more credible because the claimant's testimony was inconsistent.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes she did.

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.

871 IAC 24.25(27) 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.

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's intention to voluntarily leave work was evidenced by her actions. She told the employer that she did not like the work and left the worksite. When an employee quits work rather than perform the assigned work as instructed, her leaving is without good cause attributable to the employer. The claimant left work rather than perform the work she disliked. Her leaving was without good cause

attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's July 19, 2005 decision (reference 04) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount provided she is otherwise eligible.

bas/kjw