

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**HEATHER L HOGAN**  
Claimant

**PETERSON FARMS**  
Employer

**APPEAL 15A-UI-07788-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/14/15**  
**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 July 6, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on August 6, 2015. The claimant participated personally. The employer participated through Wannita Olson, Office Manager. A statement in lieu of appearance by owner, Justin Peterson, was offered and admitted into evidence as the Employer Exhibit One.

**ISSUE:**

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the 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: The claimant was employed part time as an office assistant and was separated from employment on June 18, 2015. Continuing work was available.

The claimant has a personal medical condition related to rheumatoid arthritis, which causes significant pain. The employer was aware of the claimant's condition, and accommodated her, by allowing her to work the shifts she felt healthy enough, and without disciplining her for work missed due to the condition. The employer is a small business and so the claimant would not be eligible for FMLA, for a prolonged absence; however, the employer did hold the claimant's position open and available to her, while she sought additional treatment, and encouraged her to perform work when able.

On June 14, 2015, the claimant contacted the employer and requested to be discharged so she could file for unemployment benefits. The claimant was not being paid for work missed and consequently felt stressed financially. The employer had to hire additional staff to make up for

her absence. Had the claimant not discontinued performing work, she would have had work available to her, at the hours she felt well enough to work.

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

For the reasons that follow, the administrative law judge concludes the 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.

Iowa Code § 96.5(1)d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25(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 § 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 § 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.

The first issue is whether the claimant was discharged from the employment or voluntarily resigned. 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 employer allowed the claimant to work reduced hours, at her request, based on a personal medical condition, without any threat of disciplinary action. The employer continued holding the claimant's position for her, even though they had to hire additional staff to cover the work. Continuing work was available to the claimant and in light of her absences, her job was in no jeopardy. It was the claimant's request to the employer that initiated the separation, and not the employer intending to sever the relationship. Therefore, for unemployment benefits purposes, the separation is a quit and not a discharge.

The next issue is whether the claimant voluntarily quit the employment for good cause attributable to the employer. Based on the evidence presented, she did not.

A claimant who confronts his employer and demands that he be discharged and is subsequently discharged actually quits his employment. Job insurance benefits "are not determinable by the course of semantic gymnastics." *Frances v. IDJS*, (Unpublished Iowa App 1986). The claimant's request is analogous; the employer intended to accommodate the claimant's hours but for the fact she left the employment, seeking unemployment benefits to financially compensate her for wages missed. This is not good cause attributable to the employer. The administrative law judge concludes that the claimant's leaving the employment may have been based upon a good personal reason, but it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

#### **DECISION:**

The July 6, 2015, (reference 01) unemployment insurance decision is affirmed. The 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.

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Jennifer L. Coe  
Administrative Law Judge

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Decision Dated and Mailed

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