

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**VEATRICE L MARKHAM**  
Claimant

**AM HOTELS INC**  
Employer

**APPEAL 18A-UI-11659-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/11/18  
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2) – Discharge for Misconduct  
Iowa Admin r. 871-24.32 – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Veatrice Markham, Claimant, filed an appeal from the November 30, 2018 (reference 02) unemployment insurance decision that denied benefits because she voluntarily quit work with AM Hotels, Inc. for personal reasons not caused by the employer. The parties were properly notified of the hearing. A telephone hearing was held on December 17, 2018 at 1:00 p.m. Claimant participated. Employer participated through Sonny Patel, General Manager. No exhibits were admitted.

**ISSUE:**

Whether claimant's separation was a discharge due to disqualifying job-related misconduct or a voluntary quit without good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a housekeeper from May 13, 2018 until her employment with AM Hotels, Inc. ended on November 6, 2018. (Claimant Testimony) Claimant's direct supervisor was Sonny Patel. (Claimant Testimony)

Claimant did not have a set work schedule. (Claimant Testimony) Claimant would call or send a text message to her supervisor to ask if she was needed at work each day. (Claimant Testimony) This was the parties' standard practice. (Claimant Testimony) Claimant last worked for employer on November 6, 2018. (Claimant Testimony) On the morning of November 7, 2018, claimant sent employer a text message asking if she needed to report to work that day and received no response. (Claimant Testimony) Claimant sent text messages to employer each day from November 8, 2018 through November 11, 2018 asking if she needed to report to work. (Claimant Testimony) Claimant received no response to these messages. (Claimant Testimony) Claimant had received no warnings regarding issues with her performance or attendance. (Claimant Testimony) Claimant did not know that her job was in jeopardy. (Claimant Testimony) Claimant did not quit her employment. (Claimant Testimony)

Employer alleges claimant was terminated for excessive absenteeism. (Patel Testimony) Employer does not have an attendance policy. (Patel Testimony) Employer alleged claimant failed to appear for work on Sunday, November 4, 2018 (Patel Testimony); claimant testified that she did not work on Sundays due to lack of child care. (Claimant Testimony) Employer alleged claimant's next most recent absence was October 20, 2018. (Patel Testimony)

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

For the reasons that follow, the administrative law judge concludes the claimant did not voluntarily quit; claimant was discharged for no disqualifying reason. Benefits are allowed.

Iowa Code § 96.5(1) provides: "An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department." Voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). Claimant had no intention of quitting her employment and performed no overt act to carry out such an intention. Claimant did not voluntarily quit; claimant was discharged.

Iowa Code section 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 disqualification shall continue 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 Admin. Code r. 871-24.32(1)(a) provides:

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the

employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

It is the duty of the administrative law judge, as the trier of fact, 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 evidence you believe; 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.*

I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the claimant's version of events to be more credible than the employer's version of those events. Employer alleged that claimant was expected to report to work every single day and he would only text claimant if she was *not* to report to work. Employer denied claimant's account of how she would ask each day whether she was needed at work. However, during employer's cross-examination of claimant, the general manager asked "how many times did you not come into work when we asked you to come to work?" Employer's cross-examination and testimony are inconsistent. If claimant was expected to report to work every single day, then employer would not ask claimant to report to work.

Employer has failed to meet its burden of proving a current act of disqualifying, job-related misconduct. Benefits are allowed.

**DECISION:**

The November 30, 2018 (reference 02) unemployment insurance decision is reversed. Benefits are allowed provided claimant is otherwise eligible.

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Adrienne C. Williamson  
Administrative Law Judge  
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Decision Dated and Mailed

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