

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNY L SYENS
Claimant

KRISHAN LODGING LLC
Employer

APPEAL 18A-UI-11288-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/07/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the November 9, 2018 (reference 01) unemployment insurance decision that found the claimant was not eligible for unemployment insurance benefits because she voluntarily quit work on September 20, 2018 by failing to report to work for three days in a row and not notifying the employer of the reason. The parties were properly notified of the hearing. A telephone hearing was held on December 5, 2018. The claimant, Jenny L. Syens, participated personally. The employer, Krishan Lodging LLC, participated through witness Dipika Patel. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

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

Claimant was employed full-time as a motel manager from May of 2017, until her employment ended on September 30, 2018. Her last day physically worked on the job was September 28, 2018. Claimant's direct supervisors were the motel owners Jack and Dipika Patel, who live approximately five hours away from the property.

When the claimant was hired, she was told that she could take days off if she had staff to cover her shifts. She typically worked 65-70 hours per week. Claimant had staff cover her shifts in the past and was never disciplined for taking time off. Claimant was never required to notify or get permission from Jack or Dipka Patel to have staff cover her shifts.

Claimant spoke to Brietta Walker, a co-worker at the motel, who agreed to cover claimant's work shifts on Friday, September 28, 2018 through Sunday, September 30, 2018. Claimant did not have a working cellular telephone at this time. She did not notify or get permission from

Jack and Dipika Patel about this change in shift coverage. On Friday, September 28, 2018, Ms. Walker did not show up for the shift because she did not have transportation to work. Claimant was never notified that Ms. Walker did not show up for her shift. The motel was unattended and guests contacted the police department when there was no one to check them into the hotel. The police department then contacted the Patels about the situation. The Patels hired Sandra Garcia as a temporary motel manager, along with a couple other co-workers, to come into the motel and operate it since the Patels did not know where the claimant was. Mrs. Patel contacted Ms. Walker about working over the weekend and was told by her husband that she did not have transportation to work. Ms. Walker did not come into work until Monday, October 1, 2018.

When the claimant returned to the motel on Sunday, September 30, 2018, she was told by Ms. Garcia that she had been hired to run the motel until they could find someone else to run it. Claimant believed that she had been discharged by the Patels because of these comments by Ms. Garcia. Claimant telephoned Mr. Patel and he did not answer her call. Claimant then moved out of the motel, where she had been living since employment, a few weeks later.

Claimant had received previous verbal discipline from Mr. Patel regarding having inappropriate guests at the hotel approximately two weeks prior to September 28, 2018. No other discipline had been issued to claimant during the course of her employment there. At no point did the claimant tell the employer she quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant's separation from work is not disqualifying. Benefits are allowed, provided claimant remains otherwise eligible.

An individual is subject to disqualification from unemployment insurance benefits if the person (1) "has left work voluntarily without good cause attributable to the individual's employer", Iowa Code § 96.5(1), or (2) is discharged for work-connected misconduct, Iowa Code § 96.5(2)a, or (3) fails to accept suitable work without good cause, Iowa Code § 96.5(3). The employer has the burden of proof to establish that the claimant is disqualified pursuant to Iowa Code § 96.5(1). Iowa Code § 96.6(2). Further, the employer has the burden of proof in establishing that the claimant's departure from the employment was voluntary. *Irving v. Employment Appeal Bd.*, 883 N.W.2d 179, 210 (Iowa 2016).

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 Admin. Code r. 871—24.25 provides in 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.

A 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).

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 Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

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 has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep’t of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The decision in this case rests, at least in part, upon the credibility of the parties. 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.* The administrative law judge has carefully weighed the credibility of the witnesses and the reliability of the evidence considering the applicable factors listed above. The administrative law judge finds that the Claimant's testimony that she was told by Ms. Garcia that she was there to run the motel until they could find someone else to run it is credible. This is so particularly in light of the fact that Ms. Patel testified that she did tell Ms. Garcia this. The claimant further denied that she had any intent to voluntarily quit and the administrative law judge finds this testimony credible.

Once claimant was told by Ms. Garcia that she had been hired to run the motel until they could find someone else to run it, the claimant reasonably concluded that she no longer had a job. She attempted to reach Mr. Patel; however, he did not answer her call. There was no further communication from either Mr. Patel or Mrs. Patel about her employment. The employer assumed the claimant had quit, but at no point did the claimant ever tell the employer she was quitting. I find the greater weight of the evidence fails to establish that the claimant intended to quit. A separation by mutual mistake is a separation that is not disqualifying. Iowa Admin. Code r. 871-24.1.

The employer has failed to meet its burden of proof in establishing a disqualifying separation from employment occurred. As such, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The November 9, 2018 (reference 01) unemployment insurance decision is reversed. Claimant was separated from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs