

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

DANIELLE J MELIDIS

Claimant

APPEAL NO. 11A-UI-05017-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLINTON DENTAL SURGERY CENTER PC

Employer

OC: 03/06/11

Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit

Section 96.5-2-a – Discharge for Misconduct

Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated April 6, 2011, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on May 26, 2011, in Davenport, Iowa. The hearing could not be completed at that time and the hearing was rescheduled for June 30, 2011, in Davenport, Iowa. The claimant participated. The employer participated by Robert Alt, DDS, and Valerie Rogers, DDS. Cody Benda, Lisa Boles, and Eve Davis were witnesses for the employer. The record consists of the testimony of Robert Alt; the testimony of Lisa Boles; the testimony of Valerie Rogers; the testimony of Cody Benda; the testimony of Eve Davis; and the testimony of Danielle Melidis.

ISSUE:

Whether the claimant was separated from her employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a dental practice in Clinton, Iowa, that offers oral and maxillofacial surgery for patients. The claimant was hired on August 20, 2009. She initially worked one day a week doing secretarial work and cleaning. In December 2009, she started as a dental assistant trainee, which is a yearlong program. The claimant was licensed as a certified dental assistant by the State of Iowa in January 2011. The claimant's last day of work was March 31, 2011, which is a Thursday.

The events that led to the claimant's separation of employment began Tuesday, March 29, 2011. Dr. Rogers had just completed work on a set of implants for a patient. The implants were placed in a laboratory case. Dr. Rogers put the laboratory case on the front desk on the evening of March 29, 2011. The contents of the case were worth approximately \$2,000.00 and Dr. Rogers had spent approximately 100 hours of her time preparing the implants. The employer never sent these cases by mail. A courier from Erickson Dental Lab would be dispatched both to pick up and then return the case. The employer also had a rule that stated that the front desk person was responsible for the case and making sure it was picked up by Erickson Dental Lab.

All of the dental assistants, including the claimant, had responsibilities at the front desk, as well as assisting Dr. Alt in surgery. The surgery suites were on a different level than the front desk. The parties do not agree on who was responsible for managing the front desk on Wednesday. The claimant was assisting Dr. Alt and she thought someone named Brenda was at the front desk. Brenda was not an employee and was there doing some personal things for Dr. Rogers. She had no training to be on the front desk. Dr. Rogers was not in the office on Wednesday.

On Thursday morning, a courier from Erickson Dental Lab came to pick up the case. Cody Benda was working at the front desk. He did not see the case. He asked the claimant where the case was and the claimant said she did not know. The claimant suggested that he ask Dr. Alt. Dr. Alt also did not know about the case and told Cody to call Dr. Rogers. Cody called Dr. Rogers and she asked to speak to the claimant. Dr. Rogers was very upset about the case being missing and delivered a stern lecture in a loud voice, which the claimant perceived as screaming, to the claimant. The claimant hung up. She was very upset and went to find Dr. Alt. He was in the middle of surgery and did not have the time to deal with the situation. He told the claimant to go home and cool off and come back to work the next day. Dr. Rogers, meanwhile, wanted to talk to the claimant again and, by that time, she had left the building.

What happened next is disputed by the parties. The claimant did call Dr. Alt at 5:30 p.m. on Thursday. Cody Benda answered the phone and transferred the call to Dr. Alt. The claimant's version of that telephone call is that Dr. Alt told her not to come in the next day. He attributed those instructions to Dr. Rogers. Dr. Alt does not recall the conversation the same way. He admitted telling the claimant he was sorry about how things had gone but he expected her to be at work the next day. Dr. Alt's schedule was not rearranged for the next day. If the claimant was not going to be at work, the schedule would have had to be changed.

The claimant did not come to work on Friday and never returned to work for the employer.

REASONING AND CONCLUSIONS OF LAW:

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The very difficult issue in this case is which party initiated the separation of employment. Both Dr. Alt and Dr. Rogers testified that neither of them terminated the claimant. Neither of them intended to terminate the claimant or wanted to terminate the claimant. Dr. Rogers was clearly upset and angry over the missing dental case and may have assumed that the claimant was responsible for the loss of the case. Dr. Rogers and the claimant had this single exchange and there is no testimony that Dr. Rogers terminated the claimant during this phone call. It was obvious from the testimony of the witnesses and the atmosphere in the hearing room that the relationship between the claimant and Dr. Rogers was strained. However, nothing was said during this conversation that indicates that Dr. Rogers terminated the claimant.

The claimant then went downstairs. She was clearly upset and understandably so. It is never pleasant to be criticized by one's employer, particularly if one feels that the criticism is given unfairly. Dr. Alt was in surgery and had to leave a patient to speak to the claimant. He told her to go home and cool off and come back the next day. This conversation was witnessed by other employees. Dr. Alt did not terminate the claimant and he obviously was in no position to address this matter in detail, since he was seeing patients.

Where the testimony cannot be reconciled is the 5:30 phone call between Dr. Alt and the claimant on March 31, 2011. According to the claimant, she asked Dr. Alt if she should come back the next day and he told her no. Dr. Alt said this was Valerie's (Dr. Rogers') decision. Dr. Alt said: "I know Danielle. I'm sorry. I'm a coward." Dr. Alt denied telling the claimant she should not come in the next day. He admitted he was sorry, but he was expressing that more about himself. He testified that he expected the claimant to come in the next day.

A critical piece of evidence came from both Dr. Alt and Cody Benda. Dr. Alt had surgeries scheduled for the next day. If he truly had terminated the claimant or told her not to come in, those surgeries would have to be rescheduled and Benda would have done the rescheduling. Benda confirmed that Dr. Alt did not ask him to reschedule the hearings. This testimony corroborates Dr. Alt's testimony that he did not terminate the claimant when he talked to her at 5:30.

Another piece of evidence is the claimant's statement to Dr. Alt when she first approached him after hanging up on Dr. Rogers that she couldn't take it anymore. This is at odds with her later testimony that she told Dr. Alt she loved her job. Eve Winter testified that she did not know if the claimant would actually come back to work on Friday because she knew the claimant was distraught over the telephone conversation with Dr. Rogers.

After carefully considering all of the evidence in this case, the administrative law judge concludes that it was the claimant who initiated the separation of employment, not the employer. There is no question that Dr. Rogers was upset with the claimant over losing the dental lab case and the claimant hanging up on her in the middle of the conversation. Dr. Rogers did not handle this matter with optimal professionalism. However, there is no testimony that she told Dr. Alt to terminate the claimant. Their conversation was giving the claimant more responsibilities in the surgical area and less at the front desk, where the claimant's skills were not as satisfactory.

The claimant's failure to come to work on Friday as instructed by Dr. Alt is evidence of her intent to sever the employment relationship. Although the claimant's relationship with Dr. Rogers was strained and difficult for both the claimant and Dr. Alt, there is insufficient evidence that Dr. Rogers' conduct constitutes good cause attributable to the employer for the claimant's leaving. The administrative law judge concludes that the claimant voluntarily left for good cause that was not attributable to the employer. Benefits are denied.

The next issue is overpayment of benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

- a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The overpayment issue is remanded to the Claims Section for determination.

DECISION:

The representative's decision dated April 6, 2011, reference 01, is reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The overpayment issue is remanded to the Claims Section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw