

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

FILICIA N TAILEY
Claimant

**CENTRAL IOWA HOSPITAL
CORPORATION**
Employer

APPEAL 20A-UI-08065-ED-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/24/20
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/appellant filed an appeal from the June 30, 2020 (reference 01) unemployment insurance decision that denied benefits based upon her voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on August 20, 2020 at 8:00 AM. The claimant, Filicia Tailey, participated personally. The employer, Central Iowa Hospital Corporation, participated through Missy Roach.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a certified nursing assistant (CNA). She began working for this employer on September 9, 2019. Her last day of work was May 18, 2020. Her immediate supervisor was Cindy Ham.

Claimant's daughter had a surgery scheduled on May 19, 2020. Claimant needed 7 to 14 days off to care for her daughter after her surgery. When the claimant told her employer about her daughter's scheduled surgery, the employer told claimant she needed to find a replacement to cover her shifts on those days. Claimant was unable to find someone to cover all of the shifts for the time she needed off. Claimant was informed that if she called in sick, she would exceed the number of days allowed and would be terminated. Claimant decided to submit her two week resignation on May 18, 2020. Claimant believed her last day of work would be May 31. Claimant called in sick on May 19, May 21, and May 22. Claimant spoke to someone on the hospital floor to report her illness, but does not recall who she spoke to. Claimant stated it was normal practice to report illness to staff on the hospital floor. Claimant was not scheduled to work on May 20. On May 23 and May 24, claimant had a replacement CNA work for her.

The employer removed claimant from the schedule on May 25 because it had documented her as no call, no show on May 19, May 21 and May 22. The employer's policy was that two no call no shows result in a second level written warning. Three no call no shows result in discharge. Claimant was made aware of this policy.

Claimant had no previous discipline during the course of her employment and she was not going to be laid off or discharged from employment. There was continuing work available to her had she not quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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(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).

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(1)c provides:

Causes for disqualification. An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

However, when the claimant tendered her resignation effective May 18, 2020, she was not allowed to work out the remainder of her resignation period. Her last day worked was May 18, 2020, instead of her intended May 31, 2020 resignation date. The employer failed to prove that the May 18, 2020 discharge was due to job-related misconduct by the claimant. As such, Iowa Admin. Code r. 871-24.25(38) establishes that no disqualification shall be imposed from the last day of work, May 18, 2020, until the proposed date of resignation, May 31, 2020.

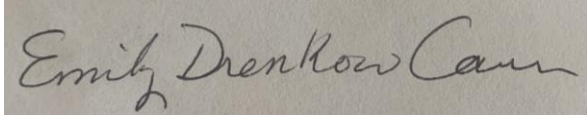
Iowa Admin. Code r. 871-24.25(38) provides:

Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

As such, there is no disqualification imposed due to claimant's separation from employment from May 18, 2020 through May 31, 2020 due to Iowa Admin. Code r. 871-24.25(38). However, claimant failed to file any weekly-continued claims for benefits and no benefits were paid from May 18, 2020 through May 31, 2020. Further, because claimant's initial resignation was not for a good-cause reason attributable to the employer, benefits are denied effective May 31, 2020 due to the claimant voluntarily quitting.

DECISION:

The June 30, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit employment without good cause attributable to the employer but was discharged from employment prior to the end of her resignation notice period for no disqualifying reason. Claimant is eligible for benefits from May 18, 2020 through May 31, 2020, provided claimant meets all other eligibility requirements. Benefits are denied effective May 31, 2020 due to claimant voluntarily quitting without good cause attributable to the employer.

A handwritten signature in cursive script, reading "Emily Drenkow Carr", written in dark ink on a light-colored, textured background.

Emily Drenkow Carr
Administrative Law Judge

August 31, 2020
Decision Dated and Mailed

ed/mh