

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**NIKITA R PHILLIPS**  
Claimant

**APPEAL NO. 19A-UI-08953-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HARBOR FREIGHT TOOLS USA INC**  
Employer

**OC: 10/13/19**  
**Claimant: Respondent (2)**

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Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 5, 2019, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on July 30, 2019 for no disqualifying reason. After due notice was issued, a hearing was held on December 9, 2019. Claimant Nikita Phillis did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Ryan Taylor represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO), which record reflects that the claimant has made no weekly claims and no benefits have been disbursed to the claimant in connection with the October 13, 2019 original claim. Exhibit 1 was received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the claimant voluntary quit the employment for good cause attributable to the employer.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Nikita Phillips was employed by Harbor Freight Tools USA, Inc. as a full-time sales supervisor for about a year and last performed work for the employer on July 29, 2019. Ms. Phillips arrived late on July 29, 2019 and walked off the job during her shift. Ms. Phillips did not return to the employment. With the late arrival on July 29, 2019, Ms. Phillips had accumulated a sufficient number of attendance points to subject her to being placed on administrative leave while the employer's human resources personnel made a decision regarding whether she would be allowed to return to the employment. However, Ms. Phillips walked off the job before the

employer got to the point of placing her on administrative leave. Ms. Phillips did not return to the employment.

Ms. Phillips established an original claim for benefits that was effective November 5, 2019, but has made no weekly claims and has received no benefits in connection with the claim.

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

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. Iowa Administrative Code rule 871-24.1(113)(c). A quit is a separation initiated by the employee. Iowa Administrative Code rule 871-24.1(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 Iowa Administrative Code rule 871-24.25.

The weight of the evidence in the record establishes a voluntary quit, rather than a discharge. The employer was the only party to participate in the appeal hearing. Accordingly, the evidence in the record is limited to the evidence presented by the employer. That evidence indicates that Ms. Phillips walked of the job on July 29, 2019 in anticipation of an attendance-based suspension and employment review that never came to pass.

Iowa Code section 96.5(1) provides:

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.

Iowa Admin. Code r. 871-24.25(28) 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 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. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(28) The claimant left after being reprimanded.

The evidence in the record establishes a voluntary quit without good cause attributable to the employer. Here, Ms. Phillips elected to voluntarily quit the employment in anticipation of an attendance-based suspension, employment status review, and potential reprimand and/or discharge that never came to pass. Ms. Phillips is disqualified for benefits until she has worked

in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Phillips must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

Because no benefits have been paid in connection with the claim, there is no overpayment of benefits to address.

**DECISION:**

The November 5, 2019, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective July 29, 2019. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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