

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELISSA DANIELSON
Claimant

GRAFFIX INC
Employer

APPEAL 15A-UI-11316-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/06/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Melissa Danielson (claimant) filed an appeal from the October 2, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination she voluntarily quit her position rather than performing her job duties as assigned by Graffix, Inc. (employer). The parties were properly notified about the hearing. A telephone hearing was held on October 26, 2015. The claimant participated on her own behalf. The employer participated through General Sales Manager Tony Christensen and President Bradley Graff.

ISSUES:

Did the claimant voluntarily leave the employment with good cause attributable to employer or did the employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Customer Service and Data Entry Clerk beginning January 1, 2013, and was separated from employment on September 2, 2015. The claimant reported directly to President Bradley Graff until March 2015 when she began reporting to General Sales Manager Tony Christensen, who is also her brother.

On September 2, 2015, Christensen arrived at the location where the claimant worked to discuss the status of the employer's Facebook account and obtain the information needed to access the page. The claimant was the only person with administration rights. He attempted to speak with her in the parking lot, but the claimant was in a hurry to clock into work so she ignored his request. When Christensen entered the office, he again attempted to engage her in a private conversation but she told him if there was anything he needed to say, he could say it in front of her co-workers. He asked her about the employer's Facebook login information, she again ignored him.

Christensen proceeded to tell the claimant if she would not work through this issue then he had termination paperwork in the vehicle. The claimant took the threat to mean she was terminated. She contacted her husband and told him she had been terminated. She then proceeded to delete files and documents from the employer's computer. Christensen told her to stop or he would need to contact law enforcement. The claimant then called her husband, who is in law enforcement, and he sent over a deputy to assist the claimant in leaving work and to escort her home. Christensen told the deputy that he had not terminated the claimant's employment, but they needed to work through issues. Later that day, the deputy returned to speak with Christensen and get a copy of the termination paperwork. However, Christensen explained at that time that the claimant had not been terminated. Christensen also told the other employees at the claimant's work location that if she returned on or before September 8, 2015, she would remain employed.

The claimant had been reprimanded in July 2015 for insubordination, creating a negative atmosphere, and not working well with other employees.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to employer. Benefits are denied.

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 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.

The claimant has argued she was discharged when Christensen walked in and announced her discharge. 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.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events more credible. The claimant is not able to state why she was discharged nor did she request a reason as to why she was being discharged. She also indicated Christensen just walked in and announced her discharge, but did not talk to her about anything else. Most importantly, both parties agree the deputy was unable to obtain a copy of the termination paperwork as Christensen stated the claimant had not been discharged.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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). The claimant had the choice of remaining employed on September 2, 2015 and could have returned to work up through September 8, 2015. She exercised a voluntary choice between remaining employed or ending the employment relationship. The final issue is whether the claimant voluntarily quit her employment with good cause attributable to the employer.

Iowa Admin. Code r. 871-24.25(22), (27) and (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:

(22) The claimant left because of a personality conflict with the supervisor.

(27) The claimant left rather than perform the assigned work as instructed.

(28) The claimant left after being reprimanded.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer.

The claimant quit work after Christensen arrived to reprimand her for her behavior regarding the employer's Facebook login. Additionally, the claimant believed she had been terminated.

However, she did not follow up with President Bradley Graff and her assumption of having been fired was erroneous, her failure to continue reporting to work was an abandonment of the job. Benefits must be denied.

DECISION:

The October 2, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/pjs