

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AUTUMN M BACKES
Claimant

BEATON INC
Employer

APPEAL 16A-UI-13345-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/20/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 9, 2016, (reference 01) unemployment insurance decision that allowed benefits from November 20 through December 3, 2016, but thereafter denied benefits based upon her resignation. The parties were properly notified of the hearing. A telephone hearing was held on January 9, 2017. The claimant Autumn Bakes participated and testified. The employer Beaton Inc. participated through Controller Kathy Frerichs and District Manager Calvin Burr. Claimant's Exhibit A and employer's Exhibit 1 were received into evidence.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the 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: Claimant was employed full time as an assistant manager from August 31, 2015, until this employment ended on November 20, 2016, when she was discharged prior to the end of her notice period.

On November 19, 2016, claimant gave her resignation via email to both Burr and Frerichs. In this email claimant gave her two week notice, with her last scheduled day being November 30, 2016. (Exhibit 1). The reason claimant gave for resigning was because she had accepted other employment and was to start her new job on December 5, 2016. On November 20, 2016, Burr informed claimant her notice was accepted and that her services were no longer needed effective immediately. Had claimant not resigned, work would have continued to be available to her. On November 22, 2016 claimant learned that the start of her new job was delayed until January 23, 2017. Claimant testified she would have been willing to work for the employer until this date, but had already been discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer, but was discharged for no disqualifying reason prior to the intended resignation date.

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.

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).

Iowa Admin. Code r. 871-24.25 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation...

(38) 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.

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). 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).

Claimant's decision to quit because she had accepted another position was not a good cause reason attributable to the employer. Because the discharge was in response to a resignation notice no misconduct is established. Since the employer terminated the employment relationship in advance of the resignation notice effective date, the claimant is entitled to benefits from the date of termination until the effective date of the proposed resignation. While claimant may have been willing to work beyond her notice period, her notice was accepted by the employer on November 20. The fact that claimant's start date at her new position was delayed is not a good cause reason attributable to the employer. Accordingly, claimant is not entitled to benefits beyond her notice period.

DECISION:

The December 9, 2016, (reference 01) decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer, but was discharged prior to the resignation effective date. Benefits are allowed until December 3, 2016. Thereafter, benefits are withheld until such time as the claimant is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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