

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHERYL MORGAN
Claimant

PARCO LTD
Employer

APPEAL 20A-UI-09261-HP-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 11/10/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Claimant Cheryl Morgan filed an appeal from a July 24, 2020 (reference 05) unemployment insurance decision that denied benefits for voluntarily quitting her work with Parco Ltd. (“Parco”). The parties were properly notified of the hearing. A telephone hearing was held on September 16, 2020. Morgan appeared and testified. Juliet Diaz appeared and testified on behalf of Parco. Exhibit 1 was admitted into the record. I took administrative notice of the claimant’s unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

On April 17, 2019, Morgan first commenced employment as a part-time crew member with Parco. Parco operates Wendy’s restaurants in Iowa. LaWanda Wells was Morgan’s immediate supervisor.

Morgan was experiencing some personal issues in December 2019. Morgan returned to work and worked on December 31, 2019, January 1, 2020, January 2, 2020, and January 4, 2020. Diaz testified Morgan was scheduled to work on January 8, 2020, January 9, 2020, January 10, 2020, and January 11, 2020, and that she was a no call, no show for the shifts and Parco considered she voluntarily quit.

Morgan testified she called for additional hours in January 2020 and spoke with Lisa on one day, and Johnny the next day. Morgan reported she was told she was not on the schedule. Morgan relayed that she tried to get ahold of Wells, but she could not. Morgan reported she ran into Wells in February 2020 and Wells told her “you don’t want to work for Wendy’s anymore.” Wells did not appear at hearing. Diaz stated she spoke with Wells and Wells did not report she had spoken with Morgan in February.

Morgan filed several claims for partial unemployment in 2019. Those claims are not the subject of this appeal. Parco submitted Exhibit 1. Exhibit 1 shows Parco terminated Morgan on June 2, 2019, she was rehired on August 30, 2019, and terminated again on January 28, 2020 for failure to report. Parco submitted e-mail correspondence regarding Morgan's attendance and work issues in December 2019, occurring before the alleged occurrences that resulted in the separation in this case. Diaz sent an e-mail to Morgan's store on January 6, 2020, asking for the number of times Morgan denied training, whether she had been offered additional hours, and whether the poster for additional hours was available to be photographed. (Ex. 1) No response was included in Exhibit 1. Exhibit 1 also contains a work schedule, but does not reference the dates that are the subject of this case.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides an individual "shall be disqualified for benefits, regardless of the source of the individual's wage credits: . . . If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department." The Iowa Supreme Court has held a "voluntary quit" means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer." *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires "an intention to terminate the employment relationship accompanied by an overt act carrying out the intent." *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). "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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016).

871 Iowa Administrative Code -24.25(4) provides:

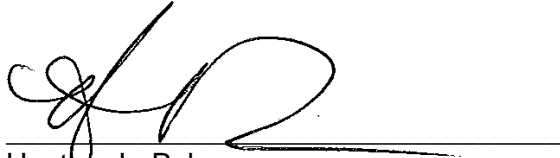
Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. . . .The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

24.25(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Parco did not submit any documentary evidence supporting Morgan was absent for three days without giving notice to Parco in violation of a company rule in January 2020. Morgan testified she called twice inquiring whether she had been scheduled and employees told her she was not on the schedule. Morgan relayed she spoke to Wells in February 2020 and Wells told her she did not want to work for Wendy's anymore. Wells did not appear at hearing to rebut the conversation. I do not find Morgan voluntarily quit her work with Parco. Benefits are granted.

DECISION:

The July 24, 2020 (reference 05) unemployment insurance decision denying unemployment insurance benefits is reversed in favor of the claimant/appellant. Benefits are allowed, provided the claimant is otherwise eligible.

A handwritten signature in black ink, appearing to read 'H. Palmer', is written over a horizontal line.

Heather L. Palmer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

September 22, 2020
Decision Dated and Mailed

hlp/scn