

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERIN A HALSEY
Claimant

WINEGARD COMPANY
Employer

APPEAL 16A-UI-07905-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/26/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 14, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 8, 2016. Claimant participated. Employer did not participate.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a quality inspector from November 2011, and was separated from employment on June 28, 2016, when she quit.

On June 28, 2016, claimant called the employer and told it she was quitting effective immediately. Claimant told the employer she was having personal issues and did not know when she would be able to return to work. Claimant quit because she did not want to be discharged and have to explain it to her next employer.

The employer has a written no fault attendance policy. If an employee has five unexcused absences, then they are discharged. The employer has a call in number that employees are to use if they are going to be absent. If an employee does not have vacation time, the absences are considered unexcused. Claimant was aware of the employer's policy.

The last day claimant worked for the employer was June 20, 2016. Claimant was scheduled to work on June 21, 22, 23, 24, and 27, 2016. Claimant did not work these five days. Claimant was absent because of immediate personal family issues. Claimant had already exhausted her

vacation time. Claimant believed that according to the employer's policy she was subject to discharge because of her five absences. The employer had not told claimant she was going to be discharged; she just assumed according to the handbook she was going to be discharged. Claimant could not take Family and Medical Leave Act (FMLA) leave because the personal issues were not medical and a doctor would not sign off for FMLA leave.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer. Benefits are denied.

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 Admin. Code r. 871-24.25(23) 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:

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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 voluntarily left employment because she had missed five days of work, she was not sure when she was going to be able to return to work, and she did not want to be discharged. Although claimant believed she was subject to discharge according to the employer's attendance policy, the employer had not told claimant she was going to be discharged. While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The July 14, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs