

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRONWYN E PETERSON

Claimant

APPEAL 15A-UI-04456-KC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 03/22/15

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 3, 2015 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 11, 2015. The claimant participated, as did her witness Valerie Koptenhaver. The employer participated through representative and witness Stephanie Swan-Johansen. Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for disqualifying, work-related misconduct?

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 kitchen worker beginning February 5, 2010. Her shift was from 8:00 a.m. to 3:30 p.m. On March 20, 2015, Swan-Johansen spoke with the claimant about her failure to fill the coolers. The employer allowed one hour per shift to fill coolers. The claimant disagreed that the task was possible to complete in one hour that day. The supervisor yelled at the claimant. The claimant left work at approximately noon, three hours before the end of her shift. She did not talk to her supervisor before she left. The claimant left because she thought she was being belittled in front of others and there were no other managers present with whom to discuss the situation. On March 21, 2015, at 8:00 a.m., the claimant returned to work and Swan-Johansen told her that she was no longer employed because she walked off the job during her shift the previous day. Prior to March 20, 2015, the claimant and other employees had left shifts before their shifts were over. The claimant did not report the situation to upper management.

Prior to March 20, 2015, Swan-Johansen gave the claimant verbal warnings about leaving her shift early. Twice in November 2014, the claimant gave a two-weeks' notice of her intent to resign; based on her frustration with her supervisor. On November 13, 2014, the second occasion, the claimant left her shift early because her supervisor yelled at her. The claimant returned the next day and gave two-weeks' notice. After further discussion with her supervisor, the claimant was allowed to continue working. Two to three weeks before the claimant's separation on March 21, 2015, the claimant did the same thing after becoming frustrated.

At that time, Swan-Johansen informed her that if she engaged in the same conduct in the future, she would no longer be employed. Leaving a shift early would not be permitted. The claimant believed that she could leave a shift before it was over and/or give notice of resignation and still be employed. She left her shift three hours early on March 20, 2015.

REASONING AND CONCLUSIONS OF LAW:

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

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(22) 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.

The 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).

The claimant did not tell upper management about her complaints regarding her supervisor. She chose to leave work during a shift because she was frustrated with the job requirements and her supervisor's statements. The claimant's decision to quit because she did not agree with the supervisor about various issues was not for a good cause reason attributable to the employer.

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985). It was not reasonable for the claimant to leave her shift during a busy period because she disliked both the employer's expectations and the way they were conveyed to her. The claimant had repeatedly left work before her shift was over when she became frustrated. She did not address her concerns with other members of management. She was informed that walking off the job would result in termination. The employer tolerated her response for a period, but after warning her, was no longer willing to tolerate her behavior.

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988); *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). The claimant's conclusion about repeatedly leaving work before her shift was over, without consequence, was not reasonable.

Since claimant had been warned if she left early her employment would end, her conduct is evidence of an intention to quit and an action carrying out that intent. This was without good cause attributable to the employer. Claimant's action was misconduct. Benefits are denied whether the separation was a quit or a discharge.

DECISION:

The April 3, 2015 (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the 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.

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/can