

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MICHELLE WITHAM**

Claimant

**APPEAL 17A-UI-13432-WG-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CEDAR RAPIDS LIGHT HOUSE INN LTD**

Employer

**OC: 03/14/21**

**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/appellant filed an appeal from the June 4, 2021 (reference 02) unemployment insurance decision that disallowed benefits based upon a finding that claimant voluntarily quit her employment. The parties were properly notified of the hearing. A telephone hearing was held on July 21, 2021. The claimant, Michelle Witham, participated personally. The employer, Cedar rapids Light House Inn, Ltd., participated through its owner, Steve McAtee.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
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, working 30-37 hours per week, as a manager of the front house of the supper club. Claimant was employed from July 6, 2015 until March 14, 2020. The supper club shut down due to the Covid-19 pandemic on March 17, 2020.

The employer called a meeting of its employees on May 27, 2020. At that time, the pandemic restrictions were being lifted and the employer notified employees they would return to work on June 2, 2020. However, claimant notified the employer that she just had a grandson born and that she was planning to care for the grandson during the day. Claimant further notified the employer that the grandson had not yet had his three month vaccinations and she did not want to return to work until that occurred.

The employer was permissive and allowed claimant to return off work until the grandson received his immunizations. The parties each believed the other was responsible for calling to schedule a return to work. Yet, neither really reached out to try to get claimant back to work. Claimant asserts she did not quit because she never turned in keys or collected her personal belongings. The employer asserts it never discharged claimant. Ultimately, I find that there was a misunderstanding between the parties. However, I find that the employer never discharged claimant. Yet, claimant never returned to work.

## 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.

Iowa Code section 96.5(2)a provides:

**Causes for disqualification.**

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 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.

While the employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge, 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). 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. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

Since claimant did not follow up with the employer since July 2021, and her assumption of having been fired was erroneous, the failure to continue reporting to work is legally considered to be an abandonment of the job. As such, I find that claimant is disqualified from receipt of benefits.

**DECISION:**

The June 4, 2021, (reference 02) unemployment insurance decision is affirmed. 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.



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William H. Grell  
Administrative Law Judge  
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July 29, 2021  
Decision Dated and Mailed

whg/kmj