

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

LINDA S AUGUSTINE
Claimant

APPEAL NO. 07A-UI-05247-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

**OC: 04/22/07 R: 04
Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Linda Augustine filed a timely appeal from the May 10, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 1, 2007. Ms. Augustine participated and was represented by Attorney Aaron Lyons, who presented additional testimony through Michelle Van Sickle (former known as Michelle Miller), ABCM Corporation Assistant Chief Operations Officer. Attorney David Schrock represented the employer and presented testimony through Janette Simon, Ed.D., Administrator of Guttenberg Care Center. Exhibits A through E, One, and Three through Seven were received into evidence.

ISSUES:

Whether Ms. Augustine voluntarily quit or was discharged from the employment. The administrative law judge concludes that Ms. Augustine voluntarily quit.

Whether Ms. Augustine's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Linda Augustine worked full-time for ABCM Corporation at Guttenberg Care Center for six years until April 25, 2007. At the beginning of the employment, Ms. Augustine worked as a Certified Nursing Assistant (C.N.A.). Ms. Augustine then trained to be a substitute cook. In 2004, Ms. Augustine assumed responsibilities for procurement, which included maintaining inventory and performing associated accounting. Ms. Augustine also assumed billing responsibilities. In April 2006, Ms. Augustine assumed human resources responsibilities.

In December 2003, Janette Simon, Ed.D., became the Administrator of Guttenberg Care Center. Dr. Simon was Ms. Augustine's immediate supervisor, except concerning Ms. Augustine's C.N.A. duties, which were supervised by the Director of Nursing. Dr. Simon and Ms. Augustine maintained a positive, mutually respectful relationship until the last few weeks of the employment. Dr. Simon valued Ms. Augustine's contribution to the workplace. Ms. Augustine's responsibilities grew under Dr. Simon's watch and with Dr. Simon's support. Dr. Simon actively supported Ms. Augustine's requests for wage increases and Ms. Augustine's

wage increased 27 percent under Dr. Simon's watch, from \$8.82 to \$13.12 per hour. Ms. Augustine received three wage increases in 2006 alone. Dr. Simon met Ms. Augustine's equipment requests and was in the process of constructing a private office for Ms. Augustine when the employment ended. Dr. Simon approved Ms. Augustine's requests to have Ms. Augustine's daughter assist with Ms. Augustine's filing duties and Dr. Simon arranged for two interns to further assist Ms. Augustine. Dr. Simon arranged for Ms. Augustine to accompany her to other ABCM facilities so that Ms. Augustine could take advantage of training and networking opportunities.

During the last weeks of the employment, Dr. Simon and other staff at Guttenberg Care Center noticed a marked change in Ms. Augustine's demeanor. Dr. Simon and other staff observed that Ms. Augustine was at times curt, irritable and overwhelmed. Dr. Simon also noted a decline in Ms. Augustine's work efficiency. Dr. Simon was aware that Ms. Augustine had competing responsibilities. Dr. Simon was aware that Ms. Augustine had personal stressors outside of work that were impacting Ms. Augustine's work performance and/or interactions with other staff. Dr. Simon contacted Michelle Van Sickle (former known as Michelle Miller), ABCM Corporation Assistant Chief Operations Officer (C.O.O), and arranged for Ms. Van Sickle to work with Ms. Augustine one-on-one to improve her efficiency. Ms. Van Sickle had formerly held an office manager position at ABCM that had included procurement duties. Dr. Simon believed Ms. Van Sickle's guidance would be especially helpful to Ms. Augustine. Ms. Van Sickle's duties as Assistant C.O.O. included labor analysis. Dr. Simon, Ms. Van Sickle and Ms. Augustine planned and prepared for Ms. Van Sickle to spend all of April 25 with Ms. Augustine. Ms. Van Sickle requested that Ms. Augustine prepare a five-day work-study to outline Ms. Augustine's various duties during any given week.

On April 17, Dr. Simon summoned Ms. Augustine to a meeting after Dr. Simon received an e-mail message from Ms. Van Sickle. The e-mail message was prompted by a telephone call from Ms. Augustine to Ms. Van Sickle about the impending April 25 visit. During the April 17 meeting, Ms. Augustine and Dr. Simon discussed the five-day work-study outline Ms. Van Sickle had requested. During the meeting, Dr. Simon told Ms. Augustine that she believed there had been a change in Ms. Augustine's work performance and referenced that Ms. Augustine was behind on some billings. During the meeting, Dr. Simon told Ms. Augustine that other staff had reported that Ms. Augustine treated them poorly and that some staff members had indicated they did not want to work with Ms. Augustine. Staff had complained to Dr. Simon that Ms. Augustine had been inappropriately discussing her personal problems in the workplace and Dr. Simon counseled Ms. Augustine against this. Ms. Augustine shared with Dr. Simon that she had sought counseling for her personal problems. Ms. Augustine told Dr. Simon that the employer would need to fire her because Ms. Augustine would need unemployment insurance benefits while she looked for other employment. Dr. Simon told Ms. Augustine that she did not want to discuss Ms. Augustine separating from the employment.

On April 19, Ms. Augustine drafted a memo to Dr. Simon. Included in the memo were the following statements: "You then suggested that I consider quitting. My response was, if you felt I was not doing my job correctly, then, you would have to be the one to fire me." Ms. Augustine concluded her memo with the following paragraph:

At this time if you do not feel it is in the interest of the ABCM Corp. nor the Guttenberg Care Center for me to continue in my current job, then I will respect your decision to dismiss me from my duties. Without a clear and specific written outline of your personal expectations of me in the role of Procurement/HR/Certified Nurse Aide, then I will also consider this to be your decision to dismiss me from my job duties.

When Dr. Simon reviewed Ms. Augustine's memo, she counseled Ms. Augustine to continue to work towards a positive outcome, and to not be anxious about Ms. Van Sickle's visit so that Ms. Augustine could get the full benefit of the time spent with Ms. Van Sickle. Dr. Simon again clarified that she was not interested in discussing Ms. Augustine separating from the employment.

Ms. Van Sickle came to Guttenberg Care Center on April 25. Ms. Van Sickle, Ms. Augustine and Dr. Simon worked cooperatively and productively from mid-morning until the early afternoon reviewing Ms. Augustine's various responsibilities and assessing the work flow. At 1:40 p.m., Dr. Simon had to leave the meeting to attend to other responsibilities.

Ms. Augustine and Ms. Van Sickle continued their work together after Dr. Simon departed. Ms. Augustine continued to express her desire to become more efficient. Ms. Augustine expressed that she was very stressed by her duties. Ms. Augustine catalogued for Ms. Van Sickle the various areas for which she had been trained and shouldered responsibility. Ms. Van Sickle perceived that Ms. Augustine was feeling overwhelmed and encouraged Ms. Augustine to take responsibility for initiating positive changes to improve her experience in the employment. Ms. Van Sickle told Ms. Augustine that she would need to adhere to the established chain of command when raising her concerns. Ms. Augustine then told Ms. Van Sickle that she had previously brought concerns to Dr. Simon and her concerns had gone unremedied. Ms. Van Sickle asked for an example. Ms. Augustine then told Ms. Van Sickle that she had had a concern about chemical fumes that went unremedied until OSHA came to Guttenberg Care Center. This information was alarming to Ms. Van Sickle, because the corporate office had not been advised that OSHA had been at the facility. OSHA had in fact not been at the facility. In 2005, Ms. Augustine had contacted OSHA with a concern about chemical fumes when new carpet was being installed at the facility. OSHA had drafted a letter to the facility relaying the concern, but found no wrongdoing or cause for intervention.

At 4:45 p.m. on April 25, Ms. Van Sickle located Dr. Simon in the facility dining room. Ms. Van Sickle expressed concern that OSHA had been to the facility and that Dr. Simon had not reported this to the corporate office. Dr. Simon denied that OSHA had been to the facility. Ms. Van Sickle advised Dr. Simon that Ms. Augustine had reported that OSHA had been to the facility. At this point, Dr. Simon, Ms. Van Sickle and Ms. Augustine went to Dr. Simon's office. Dr. Simon asked Ms. Augustine why she had told Ms. Van Sickle that OSHA had been to the facility. Ms. Augustine did not respond. Dr. Augustine repeated her question. Ms. Augustine said, "Don't you remember when they were laying carpet. Nobody did anything until OSHA came." Dr. Simon responded that OSHA had never come to the facility and continued to press Ms. Augustine as to why she would misrepresent to Ms. Van Sickle that OSHA had been at the facility. Ms. Augustine responded that nothing ever changed in the workplace and that nobody respected her. Dr. Simon asked Ms. Augustine whether she was intentionally trying to do a poor job so that Dr. Simon would fire her. Ms. Augustine responded, "What do you want from me?" Ms. Augustine then stood up, went to the door and started to exit Dr. Simon's office. Dr. Simon asked Ms. Augustine if she was quitting. Ms. Augustine responded, "Yes." Ms. Augustine then exited Dr. Simon's office.

Dr. Simon and Ms. Van Sickle did not immediately follow Ms. Augustine out of the office. A short while later, Dr. Simon and Ms. Van Sickle located Ms. Augustine in the office Ms. Augustine shared with nursing staff. The door was closed. Ms. Augustine was not engaged in performing any of her assigned work duties, but was instead packing her personal effects into a box. Dr. Simon asked Ms. Augustine if she was really quitting. Ms. Augustine answered, "Yes." At this point, Dr. Simon asked for Ms. Augustine's keys. Ms. Augustine then exited the facility with her personal effects.

The employer continued to have work available for Ms. Augustine at the time Ms. Augustine left. Ms. Augustine's role was important to the operation of the facility and the employer had no one else at the facility trained to perform Ms. Augustine's procurement duties. Ms. Augustine's departure required Dr. Simon to abandon some of her own duties for a few weeks so that she could learn and perform Ms. Augustine's procurement duties.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

Where an employee quits due to dissatisfaction with the work environment, due to a personality conflict with a supervisor, or in response to a reprimand, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21), (22), and (28).

The greater weight of the evidence indicates that Ms. Augustine voluntarily quit the employment and was not discharged. The weight of the evidence fails to support Ms. Augustine's assertion that Dr. Simon had suggested that Ms. Augustine quit the employment or had placed any pressure on Ms. Augustine to quit the employment. The weight of the evidence in the record indicates that Ms. Augustine was thinking about quitting the employment on or before April 17. The evidence indicates that Ms. Augustine was unhappy in the employment, but that the employer continued to support Ms. Augustine so that she could continue in the employment and be successful in the employment. The evidence indicates that Ms. Augustine perceived Ms. Van Sickle's impending visit as a negative judgment of her abilities. If Ms. Augustine was not working to her potential in the employment, it was reasonable for the employer to provide additional guidance and/or training to improve her performance. The evidence does not indicate intolerable or detrimental working conditions that would have prompted a reasonable person to quit the employment. The evidence indicates that Ms. Augustine overstated her case while raising her concerns to Ms. Van Sickle and led the Assistant Chief Operations Officer to believe

OSHA had recently been to the facility when this was not true. The evidence indicates that Ms. Augustine quit in response to being reprimanded by Dr. Simon for misleading Ms. Van Sickle about an alleged OSHA visit. The evidence indicates that on April 25, Ms. Augustine twice indicated, unambiguously, that she was quitting the employment. The evidence indicates that Ms. Augustine further demonstrated the intention to quit by packing her personal effects and departing the workplace with them.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Augustine voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Augustine is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Augustine.

DECISION:

The Agency representative's May 10, 2007, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs