

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER L BALLARD
Claimant

APPEAL NO. 10A-UI-03629-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IRIS MCANLY
MCANLY LOANS
Employer

OC: 01-10-10
Claimant: Appellant (1R)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 26, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 21, 2010. The claimant did participate. The employer did participate through Jenny Clark, Manager.

ISSUE:

Was the claimant discharged due to job-related misconduct or did she voluntarily quit her employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a store clerk full time beginning April 7, 2009 through December 5, 2009 when she voluntarily quit her employment.

The claimant was on vacation the first week of December 2009. She texted her supervisor, Jennifer Clark on December 5 and told her that she was quitting because she was unhappy with being accused of causing some missing paperwork and that she would be looking for another job. Continued work was available for the claimant if she had not quit. At the time she quit the claimant had been working around thirty hours per week. She was filing a weekly claim for benefits during the entire time she was employed and she was under reporting her earned wages to Iowa Workforce Development. After texting Ms. Clark, the claimant called the owner, Iris Mcanly. Ms. Mcanly allowed the claimant to quit working at the shop because of the claimant's stress level, due in part to her pregnancy. Ms. Mcanly never told the claimant she was discharged or fired. Ms. Mcanly did offer the claimant other employment at her home.

There was no plan to discharge the claimant prior to December 5 as she had been scheduled to work on December 7 after her vacation ended.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment 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.

871 IAC 24.25(6) 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 § 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 § 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:

(6) The claimant left as a result of an inability to work with other employees.

871 IAC 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 § 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 § 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.

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 administrative law judge is not persuaded that either Ms. Clark or Ms. Mcanly ever told the claimant she was discharged. The claimant sent a text message indicating she was quitting. She then called Ms. Mcanly who allowed her to quit. The employer had no plans to discharge the claimant or even reprimand her. The claimant failed to report to work after December 5, evidencing her intention to leave her job.

The claimant has under-reported her wages to Iowa Workforce Development during her entire employment with this employer.

REMAND:

The under-reporting of wages to Iowa Workforce Development by the claimant is remanded to the fraud and investigation unit for further action.

DECISION:

The February 26, 2010 (reference 01) decision is affirmed. The claimant voluntarily left her 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs