

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TABATHA J HOWARD
Claimant

HOA HOTELS LLC
Employer

APPEAL 16A-UI-04649-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/13/16
Claimant: Appellant (4)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 19, 2016, (reference 02) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on May 3, 2016. The claimant, Tabatha Howard, participated and testified. The employer, HOA Hotels LLC, participated through general manager, Shaun Staron. Claimant's Exhibit A was received into evidence.

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 part time as a server from September 2, 2014, until this employment ended on January 1, 2016, when she voluntarily quit.

On November 3, 2015, claimant started a full-time job with another employer. Claimant continued to work part time for this employer while also working her new full-time job. Claimant testified that by late December 2015, she determined that working both jobs was too much and gave notice that she was resigning her part-time position with the employer. Claimant testified she notified Staron and another manager of her intent to resign at least a week prior to her last day and her last day was January 1, 2016. After she resigned from the employer, claimant continued to work at her full-time job until she was discharged. While working at her full-time job, claimant earned wages totaling \$4,887.45 between January 7 and March 7, 2016. (Claimant Exhibit A).

The employer testified that claimant did not voluntarily resign, but was discharged for attendance violations. Staron denied ever receiving notice from claimant that she was resigning her position. Staron testified claimant was a no-call/no-show on December 6, 2015 and late to work on December 26, 2015. Claimant was never formally disciplined for either of these attendance violations, nor was she warned her employment was in jeopardy. Claimant was a

no-call/no-show again on January 10, 2016. Based on her attendance issues the previous month, Staron phoned claimant on January 12, 2016 and left her a voicemail informing her that her employment had been terminated. Claimant denied ever receiving such a voicemail.

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 but has since requalified for benefits.

Iowa Code § 96.5-2-a provides:

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 Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 Code § 96.5-1-g 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. But the individual shall not be disqualified if the department finds that:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

There is a dispute in this case as to whether the claimant voluntarily quit or was discharged from employment. It is my duty, as the administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. Based on these criteria I find the claimant's version of events to be more credible than the employer's recollection of those events. Claimant voluntarily quit her position.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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).

In the present case, the claimant resigned her position with the employer, effective January 1, 2016, because the additional hours had become too much after starting her regular full-time job. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. The claimant's separation is disqualifying. However, the administrative law judge further concludes from information contained in the administrative record that the claimant has requalified for benefits since the separation from this employer. Between January 7 and March 7, 2016, claimant received wages in the amount of \$4,887.45. This is more than ten times claimant's weekly benefits amount. Accordingly, benefits are allowed and the account of the employer (account number 514364-000) shall not be charged.

DECISION:

The April 19, 2016, (reference 02) unemployment insurance decision is modified in favor of the appellant. The claimant quit without good cause attributable to the employer, but has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/pjs