

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PENNY L HURLBURT**  
Claimant

**APPEAL NO. 10A-UI-15660-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AHMED ELAHMADY PCD**  
Employer

**OC: 08/29/10**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated November 3, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 6, 2011. The claimant participated. The claimant's husband, Brent Hurlburt, was present. The employer participated by Ahmed Elahmady, M.D. The record consists of the testimony of Penny Hurlburt; the testimony of Ahmed Elahmady; Claimant's Exhibit A; and Employer's Exhibits 1 and 2.

**ISSUE:**

Whether the claimant was separated from her employment for any disqualifying reasons.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case is a gastro-enterology/hepatology medical practice located in Clinton, Iowa. The claimant was the full-time clinic administrator. She had two stints of employment, with the most recent one beginning in February 2004. Her last day of work was August 26, 2010.

One of the claimant's job duties was to pick up the mail. On August 27, 2010, a letter was in the mail addressed to her personally with no return address. The letter was postmarked on August 26, 2010, in the Illinois Quad Cities. (Claimant's Exhibit A) When the claimant opened the letter, it contained a Facebook page. One of the individuals who posted something on this Facebook page was another employee named Josey Driscoll. Reference was made by Ms. Driscoll to the "psycho bitch" in billing. The claimant believed that this was referring to her, since she did do the billing.

The claimant took her concerns to the general administrator. More Facebook pages were found, including suggestions that Ms. Driscoll "punch her" and "kick her in the uterus." The

general administrator recommended that the claimant go to the police. The claimant asked for the rest of the day off. She was going to use her PTO time. She also left keys for the building and the post office box when she left. She did not go to the police. She went to the hospital instead. Her mother-in-law was in the hospital and the claimant wanted to talk to her husband.

Dr. Elahmady normally did not work on Fridays but became aware of the situation. He told his general administrator to tell the claimant that unless she was back to the office within 30 minutes, she was done. The claimant did not return to the office and did not contact Dr. Elahmady. The claimant and Dr. Elahmady met on September 15, 2010. The claimant was given an opportunity to return to her job, but the claimant felt that the office environment was too hostile.

### **REASONING AND CONCLUSIONS OF LAW:**

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.

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.

The difficult issue that is presented in this case is the nature of the separation of employment. The testimony of the claimant and Dr. Elahmady differ on several crucial points. Although the claimant testified these events took place on August 26, 2010, that is not plausible, since the letter with the Facebook page is postmarked on August 26, 2010. The more likely scenario is that the letter was received on Friday, August 27, 2010. The anonymous letter contained a Facebook page. The claimant was not specifically named in that Facebook page, but the claimant felt that references to the "psycho billing clerk" meant her, since she was the billing clerk. Other pages were found and references were made to punching that could have reasonably been interpreted as threats of physical violence. The claimant was advised to take the issue to the police. The claimant did not follow this advice.

At that point, communication broke down between the employer and the claimant, largely because texting with a third party go-between was used instead of actual phone conversations between the claimant and Dr. Elahmady that might have resolved the situation. Dr. Elahmady was not in the office that day and had called to ask the claimant a question. The only information that he appears to have gotten is that the claimant was gone. He then said that if she did not come back to the office in 30 minutes, she was terminated. The claimant testified that she did not get message until after the 30 minutes had passed. She then complicated matters by failing to contact her employer thereafter.

Both parties bear some responsibility for the separation of employment. The claimant testified that she did not quit when she left that day, even though she did leave the keys. She was distraught over the Facebook page and had asked for the rest of the day off. Dr. Elahmady appears to have overreacted to her absence and told his administrator to tell the claimant she

was done if she did not get back within 30 minutes. The administrative law judge concludes that the most reasonable interpretation of the evidence is that the claimant believed she had been terminated because she did not return to the office as directed. Since the employer initiated the separation of employment, there is no voluntary quit.

Since the claimant was terminated, the remaining issue is whether there is evidence of job-related misconduct that would disqualify the claimant from receiving unemployment insurance benefits.

Iowa Code section 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.

871 IAC 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.

Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes errors of judgment or discretion in isolated situations. The employer bears the burden of proof.

There is insufficient evidence of misconduct in this record. The claimant had been given permission to leave after it was discovered that a co-employee posted threatening and offensive language on a Facebook page. The claimant was understandably upset and had been advised to go to the police. Her failure to call Dr. Elahmady after she received a text that he wanted her to return within the next 30 minutes may have been an error of judgment on her part. Given the totality of the circumstances, however, there is no misconduct. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated November 3, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

---

Vicki L. Seeck  
Administrative Law Judge

---

Decision Dated and Mailed

vls/kjw