

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MERCY W VAYE
Claimant

WHIRLPOOL CORPORATION
Employer

APPEAL 21A-UI-23816-ED-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/07/21
Claimant: Appellant (4R)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 26, 2021, (reference 01) unemployment insurance decision that denied benefits based upon her voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on December 17, 2021. The claimant, Mercy Vaye, participated personally. The employer, Whirlpool Corporation, did not participate. No exhibits were offered or admitted.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an assembler beginning June 27, 2016.

During the course of claimant's employment she requested time off on February 4, 2021 through March 5, 2021 to tend to her children who were remote learning. The employer agreed to allow the claimant to have this time off. The claimant returned to work per her usual schedule after March 5, 2021.

The claimant has not separated from the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case claimant was absent from work on the following dates: February 4, 2021 until March 5, 2021. Claimant was off work to assist her children in home schooling. Claimant did not separate from the employer.

Iowa Admin. Code r. 871-24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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).

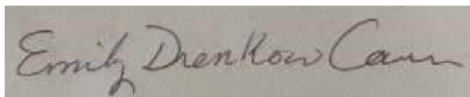
In this case, claimant did not separate from the employer. Claimant was gone from work February 5, 2021 until March 6, 2021 to assist her children in home schooling.

DECISION:

The March 26, 2021, (reference 01) unemployment insurance decision is modified in favor of the claimant and without prejudice to the employer as there has been no separation from the employer.

REMAND:

The issue of whether claimant is able to work and available to work and on an approved leave of absence February 4, 2021 through March 5, 2021 is remanded to the Benefits Bureau for investigation and determination.

A rectangular box containing a handwritten signature in dark ink. The signature appears to read "Emily Drenkow Carr".

Emily Drenkow Carr
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

January 21, 2022
Decision Dated and Mailed

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