

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JUDY D MOORE**  
Claimant

**THOMAS L CARDELLA & ASSOCIATES INC**  
Employer

**APPEAL 15A-UI-09350-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/26/15**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 17, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination that she voluntarily quit her employment after being reprimanded which is not a good-cause reason attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on September 4, 2015. Claimant Judy Moore participated on her own behalf. Employer Thomas L Cardella & Associates, Inc. participated through Anna Miller, Tracy Beckham, and Stephanie Morrison. It was represented by Barbara Toney of TALX.

**ISSUES:**

Did the claimant voluntarily leave the employment with good cause attributable to employer or did the employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a Telephone Sales Representative beginning November 13, 2014, and was separated from employment on July 23, 2015. The claimant was responsible for making outbound calls and selling products for one of the employer's clients.

On July 23, 2015, the claimant was making outbound calls and made a \$4,000.00 sale; however, she did not try to up sell the customer on additional products. Her supervisor, Melissa Harris, was notified about the phone call. Harris called the claimant and Trainer/Supervisor-in-Training Tracy Beckham into the office. The claimant was on a final written warning for failing to up sell on her calls. The purpose of the meeting was to send the claimant home for the day and then have her return the following day. The conversation did not go well. Harris told the claimant to go home but did not take her badge or the token which allowed the claimant to utilize the employer's computer system. The claimant worked in a shared desk space situation and it was not uncommon to remove most of her personal items before leaving work. However, she kept a personal chair at the office which she had never

removed from her work space. After the meeting with Harris, the claimant packed up her personal items from her desk and locker including her personal chair. She wheeled the chair out to her car and told Administrative Assistant Stephanie Morrison that she quit. Morrison asked the claimant to call or come in the next morning. The claimant then went to the IowaWorks office and made an appointment with her doctor for the following day.

The claimant did not call or report to work the following day. Supervisor Anna Miller asked Morrison to contact the claimant. Morrison left a message for the claimant which was never returned. Over the weekend, the claimant sent Miller a message over Facebook asking about the status of her job. Miller responded to the claimant telling her to contact her at the office on Tuesday, as she was out of the office on Monday.

On Monday, July 27, 2015, the claimant drove to the employer's facility and saw Morrison outside. The claimant tried to give back her entrance badge. Morrison directed the claimant to speak with Miller on Tuesday. On Tuesday, July 28, 2015, the claimant called to speak with Miller. Morrison told her that Miller was not available as she was busy.

On Thursday, July 29, 2015, Miller looked for the claimant's token, which is an expensive piece of technology that was never supposed to leave the facility. Morrison called the claimant to ask her if she had the token. The claimant called back, stated she did have it, and offered to return it on Friday.

The following day, the claimant brought in her token, but would not leave it with Morrison as she wanted to speak with Miller. Miller met with the claimant, with Beckham and Morrison present as witnesses. Miller explained to the claimant she was no longer employed as she had quit without notice.

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

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to employer. Benefits are denied.

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 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 unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. In this case, the claimant contends she was terminated when she was told to go home. The employer claims the claimant quit her employment after the meeting with Harris.

It is the duty of the administrative law judge as 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 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. *Id.* 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 believable evidence; 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. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant voluntarily quit her employment. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

It is credible to believe Harris told the claimant to go home and likely did not adequately explain the claimant was to return the following day before the claimant left the meeting. While she might not have explained the claimant was to return the following day, she did allow the claimant to leave the facility with her access badge. Additionally, Morrison told the claimant to contact Miller the following day or return to work the following day before the claimant left the facility. It is undisputed that the claimant packed up all of her personal belongings, including her office chair that she normally left at the facility. Morrison also credibly testified the claimant said she quit as she was leaving with her personal belongings. The claimant exercised a voluntary choice to end her employment, stated her intention, and packed up her belongings as the overt act carrying out that intention on July 23, 2105. Based on that finding, the events that occurred after that day between the claimant and employer are not relevant to the determination of how her employment ended.

The next issue is whether the claimant voluntarily quit her employment with good cause attributable to the employer.

Iowa Admin. Code r. 871-24.25(28) 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:

(28) The claimant left after being reprimanded.

The 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). The claimant quit her employment after Harris admonished her for failing to up sell. The claimant did not believe the admonishment was necessary or that Harris was listening to her during that meeting. However, the claimant's decision to quit because she did not agree with the Harris or the reprimand was not for a good cause reason attributable to the employer.

**DECISION:**

The August 17, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to 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.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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