

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRICIA M STROMER
Claimant

APPEAL NO: 10A-UI-01102-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STUFF ETC INC
Employer

OC: 12/06/09
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Tricia M. Stromer (claimant) appealed a representative's January 13, 2010 decision (reference 03) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Stuff Etc., Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 13, 2010. The claimant participated in the hearing, was represented by David Burbidge, Attorney at Law, and presented testimony from two other witnesses, Nick Swarting and Lori McCurn. Stacie Frede appeared on the employer's behalf and presented testimony from two other witnesses, Marce Billups and Jessie Sherman. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 19, 2008. She most recently worked full time as a pricer/supervisor in the employer's Iowa City, Iowa store. Her last day of work was November 30, 2009. She was next scheduled to work on December 2, but on December 1 Ms. Frede, the store manager, sent the claimant a text message indicating that she was not needed to work on December 2. The claimant was not scheduled to work again until on or after December 4.

There had been some communication between the claimant and the employer regarding the possibility of the claimant obtaining new employment elsewhere. As of December 3 the employer, and specifically Ms. Frede, was unclear as to the claimant's intentions to stay on working for the employer. As a result, on December 3 Ms. Frede sent the claimant another text message asking her to come in for a discussion. The claimant assumed that the discussion was going to be the employer discharging her. As a result, on December 4 the claimant came

into the store during a time that Ms. Frede was not there; Ms. Billups, the assistant manager was there. The claimant demanded Ms. Billups tell her why she was being fired; Ms. Billups responded that to the best of her knowledge, the claimant was not being fired. She urged the claimant to wait and speak to Ms. Frede. However, the claimant put her key and name badge down and left. She did not make any attempt to contact or speak to Ms. Frede.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that her separation was not “voluntary” as she had not desired to end the employment; she argues that the text message she received from Ms. Frede on December 3 indicated that she was going to be discharged and therefore it was the employer’s action which led to the separation so that the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). The claimant could not establish the exact language of the text message; she had not shown the message to any of her witnesses, nor had she made any attempt to preserve or retrieve the message. Where, without satisfactory explanation, relevant and direct evidence within the control of a party whose interests would naturally call for its production at hearing is not produced, it may be inferred that evidence would be unfavorable. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). Further, witnesses on the part of the employer corroborate that regardless of any ambiguity that may have been in the text message, when the claimant came in on December 4, she was told she had not been discharged. The claimant has not established that she had been told she was discharged.

Rule 871 IAC 24.25 provides that, 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 rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as where an employee mistakenly believes she has been or is about to be discharged, but where the employer has not told the employee she has been discharged. 871 IAC 24.25.

The claimant left the employment but had not been told she was discharged; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (22). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer’s work environment detrimental or intolerable. O’Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's January 13, 2010 decision (reference 03) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of December 4, 2009, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css