

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LOLIAN K BADEAUX
Claimant

APPEAL 23A-UI-07649-PT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AUSTIN MAINTENANCE & CONSTRUCTION
Employer

**OC: 07/16/23
Claimant: Appellant (4)**

Iowa Code § 96.5(1) – Voluntary Quit from Employment
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.26(4) – Quit due to Intolerable Working Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 3, 2023 (reference 01) unemployment insurance decision that allowed benefits from June 18, 2023 to July 1, 2023, based on a determination that the claimant resigned effective July 1, 2023, but because of her resignation, the employer terminated her employment on June 21, 2023. The parties were properly notified of the hearing. A telephonic hearing was held on August 22, 2023. The claimant participated personally. The employer did not participate. The administrative law judge took official notice of the administrative record.

ISSUES:

Whether claimant quit the employment without good cause attributable to the employer.
Whether claimant was discharged for disqualifying, job-related misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant last worked for the employer on June 21, 2023. The employer discharged claimant on June 21, 2023, after claimant offered the employer her two-week notice of resignation.

Claimant was employed as a full-time OSHA safety technician from October 20, 2021, until her employment with Austin Maintenance & Construction ended June 21, 2023. As an OSHA safety technician, claimant was responsible for ensuring that employees comply with OSHA safety standards and for identifying and eliminating workplace hazards.

For the last several months of claimant's employment, claimant's site supervisor refused to enforce OSHA safety standards and he allowed violations to go uncorrected. Claimant grew increasingly concerned about the safety of the employees in the facility, so in late-May 2023, claimant reported her concerns to a corporate director. After speaking with the director, the site supervisor called claimant, yelled at her, and loudly repeated three times, "You will never call corporate on me again!"

In the weeks following claimant's call to the director, the site supervisor began interrupting claimant during her morning safety meetings by making hurtful jokes about her and other comments intended to undermine her authority. Additionally the site supervisor began instructing employees not to communicate with claimant and claimant regularly heard the supervisor mocking her to other employees and laughing behind her back. Claimant reported this behavior to Human Resources several times, but Human Resources never responded to claimant's emails.

Because of the employer's hostile treatment, in mid-June 2023, claimant informed the employer that she would be resigning her employment effective July 1, 2023, because she was planning to start a new job. On June 21, 2023, the site supervisor called claimant into a meeting and terminated her employment effective immediately stating that he was, "Acknowledging her resignation early." A few days later, claimant was told that the new job she had planned to start in early-July 2023 was not going to work out. Claimant performed no work and earned no wages with the other employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit her employment with good cause attributable to the employer, but was discharged for no disqualifying reason prior to the intended resignation date. Benefits are allowed.

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. The burden of proof rests with the employer to show that the claimant voluntarily left the employment. *Irving v. Empl. App. Bd.*, 15-0104, 2016 WL 3125854, (Iowa June 3, 2016). 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). It 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).

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 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 disqualification shall continue 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 Admin. Code r. 871-24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

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 notice of intent to quit is not required when an employee quits due to intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). Inasmuch as an employer can expect professional conduct and language from its employees, claimant is entitled to a working environment without being the target of hurtful jokes or abusive name-calling.

Here, claimant was subjected to yelling, hurtful jokes, and disparaging remarks from the site supervisor and other employees on a regular basis for weeks on end. This certainly amounts to a detrimental working environment. While claimant was not obligated to report these conditions, she nevertheless she filed several complaints with Human Resources, but received no response. Claimant has established she quit with good cause attributable to the employer. As such, even though the employer terminated the employment relationship in advance of the

resignation notice effective date, claimant is eligible for benefits after the effective date of the proposed resignation. Benefits are allowed.

DECISION:

The August 3, 2023 (reference 01) unemployment insurance decision is modified in favor of appellant. Claimant voluntarily quit her employment with good cause attributable to the employer, but was discharged for no disqualifying reason prior to the intended resignation date. Benefits are allowed, provided claimant is otherwise eligible.



Patrick B. Thomas
Administrative Law Judge

August 28, 2023
Decision Dated and Mailed

PBT/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.