

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELLE R MEINDERS
Claimant

APPEAL 16A-UI-07269-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TIMELY MISSION NURSING HOME
Employer

**OC: 06/05/16
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 21, 2016, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on July 20, 2016. The claimant Michelle Meinders participated and testified. Witness Melinda Eliason testified on behalf of the claimant. The employer Timely Mission Nursing Home participated through administrator Stephanie Morris and witness Jill Meld. Employer's Exhibits 1 through 7 were received into evidence.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the 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: Claimant was employed full time as a laundry worker from September 17, 2007, until this employment ended on May 16, 2016, when she voluntarily quit.

On May 9, 2016, claimant and Morris had a discussion regarding claimant's request for a pay raise. The discussion became heated. According to Morris the discussion ended when claimant took off her name badge, threw it onto her desk, and said, "I guess I won't need this anymore." Morris testified she asked claimant to sign a voluntary quit form and she responded, "I'm not signing anything" and left. Morris took this to be claimant's resignation. Meld, who was working at her desk nearby, confirmed much of Morris' testimony; however, she stated she heard claimant say she would be in the following day to sign the voluntary quit form. On May 13, 2016, claimant went to the home of a board member and told him she may have given Morris the impression she was quitting. (Exhibit 2). Morris responded to the board member that claimant told her if she could not have a raise she quit, then threw her badge on her desk and left.

Claimant denied she quit her job. Claimant admitted to placing her name tag on Morris' desk, but was not sure why she did this, as she normally put her badge in her pocket at the end of the day. Claimant denied saying anything that would lead Morris to believe she quit and testified she told Morris she would be in the next day to talk with her. Claimant later approached her immediate supervisor, Eliason, and told her she was not going to be there the next day because she needed time to calm down. The following day, May 10, claimant came into the office to try to talk with Morris, but left when she learned Morris was not in. Claimant did not show up to work any of her next four scheduled shifts. Claimant testified she did not come to work those days because Eliason advised her not to. Eliason testified claimant had asked her what to do following her discussion with Morris and she advised her she was not sure, but she probably should not come in. On May 16, 2016, claimant showed up to work at her regularly scheduled time. When Morris saw claimant she asked her what she was doing there, told her she no longer worked there, and asked her to leave.

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.

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 Admin. Code r. 871-24.25(13) and (37) 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 section 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 section 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

...

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

The decision in this case rest, at least in part, on the credibility of the parties. 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, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

The claimant indicated she was quitting her position by taking off her badge and putting it on Morris' desk. Claimant testified she normally does not leave her badge with Morris at the end of the day, but places it in her pocket. This, coupled with claimant's statement to Morris that she would not need her badge any longer, would give a reasonable person the impression that claimant was quitting. This resignation was accepted by Morris, as evidenced by her request that claimant sign the voluntary resignation form. While claimant may have later regretted this decision and wished to have her job back, the employer had already accepted her resignation. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The June 21, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she is deemed eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/pjs