

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JODI L RIGLER
Claimant

TEDROW JOLENE
Employer

APPEAL 21A-UI-24827-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/26/21
Claimant: Respondent (1R)**

Iowa Code § 96.5(1) – Voluntary Quitting – Layoff
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the November 1, 2021 (reference 01) unemployment insurance decision that allowed benefits based upon claimant's lay off from work. The parties were properly notified of the hearing. A telephone hearing was held on January 7, 2022. The claimant participated personally. The employer participated through witness Sheri Moore. The administrative law judge took official notice of the claimant's administrative records.

ISSUES:

Was the separation from employment disqualifying?
Is the claimant overpaid benefits?
Is the employer's account chargeable?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment on August 25, 2019 as a part-time production worker. She last physically worked with the employer in September of 2021. On September 20, 2021, she was instructed by Corky, the supervisor, that there was no further work for her.

Claimant filed a claim for unemployment insurance benefits effective September 26, 2021. She has received benefits of \$1,960.00 from September 26, 2021 through January 1, 2022. The employer participated in the October 28, 2021 fact-finding interview.

Employer contends that the claimant became an independent contractor for the period of time following December 31, 2020. Claimant contends she was an employee for the employer during the period of time following December 31, 2020. The claimant's relationship as an independent contractor or employee shall be remanded to the Benefits Bureau of Iowa Workforce Development for an investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

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). It is the employer's burden to establish that the claimant voluntarily quit. See Iowa Code § 96.6(2). In this case, claimant had no intention to quit and there was no overt act by the claimant that would have carried out any intention to quit.

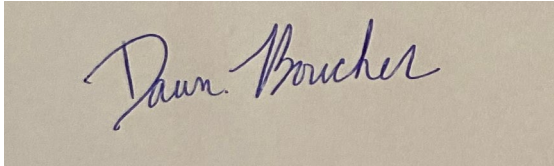
Claimant was instructed that there was no work for her due to the employer's lack of work. If it is determined upon remand that the claimant was an employee of this employer in September of 2021, her separation from employment this employer was not disqualifying. If it is determined that the claimant was an independent contractor, that relationship is not reviewed for purposes of any disqualifying separation from employment. As such, benefits are allowed, provided claimant remained otherwise eligible.

DECISION:

The November 1, 2021 (reference 01) unemployment insurance decision is affirmed. The claimant's separation was not disqualifying. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND:

Employer contends that the claimant became an independent contractor for the period of time following December 31, 2020. Claimant contends she was an employee for the employer during the period of time following December 31, 2020. The claimant's relationship as an independent contractor or employee shall be remanded to the Benefits Bureau of Iowa Workforce Development for an investigation and determination.



Dawn Boucher
Administrative Law Judge

January 28, 2022
Decision Dated and Mailed

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