

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELANIE L FLORES
Claimant

KWIK TRIP INC
Employer

APPEAL 21A-UI-00662-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/28/20
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 November 10, 2020 (reference 03) unemployment insurance decision that denied benefits to claimant. The parties were properly notified of the hearing. A telephone hearing was held on February 13, 2021 at 8:00 AM. The claimant, Melanie Flores participated personally. The employer, Kwik Trip Inc., participated through John Richardson. No exhibits were received into the record.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time with Kwik Trip Inc. beginning November 22, 2019 as a guest service worker. Her last day physically worked on the job was June 26, 2020.

Employer has a written policy that states three consecutive no call no shows will be considered a voluntary quit by employees. Claimant received a copy of this written policy when she became employed by the employer.

Claimant was scheduled to work on June 30, July 1 and July 2, 2020 but did not report to work or call in absent. Claimant did not report any of the three absences to the employer. The employer tried to call claimant on all three days but was not able to speak with her. The employer left a voicemail. After the third no call no show, claimant was considered to have voluntarily quit her job pursuant to the employer's written policy. There was continuing work available to claimant if she had not voluntarily quit. Claimant's job was not in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Iowa Admin. Code r. 871-24.25(4) provides:

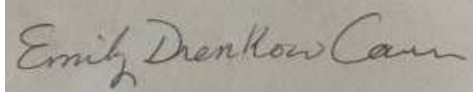
Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified 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:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

In this case, claimant had an intention to quit and carried out that intention by failing to come to work for any further scheduled shifts. 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). There was no reason given by the claimant for her voluntarily quitting her employment. As such, claimant's leaving the employment was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The November 10, 2020 (reference 03) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

A rectangular box containing a handwritten signature in cursive script that reads "Emily Drenkow Carr".

Emily Drenkow Carr
Administrative Law Judge

February 25, 2021
Decision Dated and Mailed

ed/scn