

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENISE MICHAELSEN
Claimant

MASTERTSON PERSONNEL INC
Employer

APPEAL 21A-UI-11540-AR-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/07/21
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On April 29, 2021, claimant, Denise MichaelSEN, filed an appeal from the April 20, 2021, reference 02, unemployment insurance decision that denied benefits based upon the determination that claimant voluntarily quit her employment with the employer, Mastertson Personnel, Inc., without showing good cause for having done so. The parties were properly notified about the hearing held by telephone on July 13, 2021. The claimant participated personally. The employer participated through Jim Robertson, with witness Audrey Schlei. Employer's Exhibits 1 through 3 were admitted.

ISSUE:

Did the claimant quit her employment without good cause attributable to the employer, or did the employer discharge claimant for job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was assigned to work in assembly at McNeilus. She was doing well and had been told that McNeilus intended to hire her as a permanent employee.

On March 8, 2021, a baggie of what was later identified as methamphetamine was found in the women's restroom at McNeilus. In response, McNeilus began interviewing people who had been at work that day, including claimant. The interviewer indicated that claimant acted nervous, and did not make eye contact during the interview. Additionally, there was discussion of claimant having been accused of drug possession in the past. Finally, McNeilus asked claimant to leave for the day. The McNeilus representative reported to the employer that claimant "bolted" from the premises, after becoming very angry.

McNeilus reported the incidents of the day to Schlei. Schlei, in turn, called claimant and asked her to come to the office for a drug screen. Claimant could not come to the office, which was nearly an hour away from the worksite, because she did not have her own car, and had been carpooling to the worksite. The employer did not offer transportation for claimant in order to

come to the office. When claimant did not report to the office for a drug screen that day, Schlei reported this to McNeilus. McNeilus terminated the assignment at that time. The employer reached out to claimant by text the following day, requesting a call back, but claimant did not respond. At that time, the employer concluded that it would not continue to offer claimant work assignments based on her failure to present for a drug screen or follow up with the employer.

The employer maintains a drug and alcohol policy, which allows for reasonable suspicion drug testing. Claimant signed an acknowledgement of receipt upon her hire, and recalled the policy at hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer.

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—24.26(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 an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447–78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871—24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871—24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to rule 871-24.26(6)(b) but not 871—24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Claimant demonstrated an intent to sever the employment relationship when she failed to respond to the employer's attempt to communicate with her on March 9, 2021. The separation was a voluntary quit, and not a discharge.

Iowa law allows for drug testing when the employer has a reasonable suspicion the employee is using or has used alcohol or other drugs in violation of the employer's written policy. Iowa Code § 730.5(1)(i). In order to request an employee submit to an alcohol or drug test based on

reasonable suspicion, the employer must be able to articulate specific, objective, and articulable facts and inferences from those facts as to why there is a reasonable suspicion of a violation of its policy. Examples of what gives rise to a reasonable suspicion are direct observation of alcohol or drug use, physical symptoms of impairment, and abnormal or erratic behavior. *Id.* The employer has not demonstrated to the satisfaction of the administrative law judge that it had reasonable suspicion that claimant was under the influence of drugs, or even that the drugs found in the bathroom at the worksite were claimant's. The mere fact that few women were working at the worksite that day, and the drugs were found in the women's room, does not demonstrate that claimant was responsible. Even taking into account the worksite's report of claimant's behavior that day, the employer has not demonstrated that it had specific, articulable reasons to require claimant to submit to a drug test. Claimant may have acted erratically, but she was also under suspicion of serious allegations. The worksite did not allege that claimant appeared to be under the influence of drugs; it only alleged that she acted in a way that it judged to be suspicious. There is too little evidence of reasonable suspicion under Iowa law to conclude that the employer was justified in demanding that claimant submit to a drug test.

If the employer was not justified in demanding a test, claimant did not have to submit to the demand of the employer, and her separation from the employer was with good cause attributable to the employer.

DECISION:

The April 20, 2021, (reference 02) unemployment insurance decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

July 26, 2021
Decision Dated and Mailed

ar/lj