

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

JESSICA G CLEMENTI
Claimant

EZPAWN IOWA INC
Employer

APPEAL NO. 23A-UI-07370-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/02/23
Claimant: Appellant (5)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On July 27, 2023, Jessica Clementi (claimant) filed a timely appeal from the July 21, 2023 (reference 01) decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on June 17, 2023 without good cause attributable to the employer. After due notice was issued, a hearing was held on August 14, 2023. Claimant participated. The employer's third-party professional representative, Frankie Patterson of ADP, briefly joined the hearing at 10:05 a.m. The employer's witness, Todd Nelson, did not comply with the hearing notice instructions to call the designated toll-free number to join the appeal hearing. Mr. Patterson was unable to reach Mr. Nelson to prompt him to join the hearing. Mr. Patterson told the administrative law judge that, pursuant to ADP policy, he was unable to participate in the hearing if the employer witness did not appear. Mr. Patterson departed from the hearing at 10:07 a.m. Mr. Patterson did not rejoin the hearing. No one else participated on behalf of the employer. Exhibits A and B were received into evidence.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntary quit without good cause attributable to the employer.
Whether the employer terminated the employment in response to the quit notice.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Jessica Clementi (claimant) was employed by EZPawn Iowa, Inc. as a full-time Lead Pawn Broker from 2020 until June 17, 2023. A few months into the employment, the claimant became a Certified Lead Pawn Broker. The claimant was not required to maintain the certification as a condition of the employment. The employer conducted a background check on the claimant at the start of the employment. The employer sells guns at the location where the claimant was employed.

The claimant advises that in October 2022 the claimant was charged with drug-related criminal offenses. The claimant advises that in May 2023 the claimant entered a guilty plea to a class

“C” felony drug offense. The claimant was aware that upon sentencing on the criminal charge she would be a convicted felony and, as such, prohibited from possessing firearms. The claimant was aware that the prohibition against possessing firearms would prevent her from continuing in the employment once she was sentenced. At the time of the guilty plea, the Court set the sentencing date for June 24, 2023. The claimant kept the employer updated on the status of the criminal prosecution.

On June 17, 2023, the claimant told her supervisor that she would be quitting the employment effective June 24, 2023, her sentencing date, in light of the law that would prohibit her from possessing firearms as a felon. The claimant’s supervisor notified the regional manager, who in turn contacted the employer’s human resources personnel. The human resources personnel elected to end the employment that same day and cited an alleged policy that allegedly prohibited the claimant from working for the employment if she had drug-related charges pending. The claimant’s supervisor notified the claimant of the employer’s decision not to allow the claimant to work during the quit notice period.

The claimant established an original claim for unemployment insurance benefits that was effective July 2, 2023. The claimant delayed her unemployment insurance claim because she was under the belief that she would receive payment for accrued paid time off (PTO) in connection with the separation. The employer’s benefits personnel notified the claimant at the end of June 2023 that PTO would not be paid out in connection with the separation.

REASONING AND CONCLUSIONS OF LAW:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Code section 724.26, regarding possession, receipt, transportation, or dominion and control of firearms, offensive weapons, and ammunition by felons and others, provides in relevant part as follows:

1. A person who is convicted of a felony in a state or federal court...and who knowingly has under the person’s dominion and control or possession, receives, or transports or causes to be transported a firearm or offensive weapon is guilty of a class “D” felony.

Iowa Admin. Code r. 871-24.25(38) provides:

- (38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation,

no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

The evidence in the record establishes a voluntary quit without good cause attributable to the employer. The quit was effective June 24, 2023, which was the effective quit date the claimant provided when she gave notice of her quit. The supervisor's communication with the regional manager regarding the quit notice was sufficient to established acceptance of the resignation. The sole basis for the quit was the claimant's guilty plea to a class "C" felony criminal offense, the impending sentencing date, and the claimant's knowledge that she could not continue in the employment because she could not lawfully possess guns as a convicted felon. The employer elected to terminate the employment on the same day the claimant gave notice of her resignation. In light of the claimant's voluntary quit and the July 2, 2023 effective date of the unemployment insurance claim, the administrative law judge need not, in connection with deciding this case, determine whether the claimant was "convicted" once she entered her guilty plea or whether the claimant would not be convicted until she was sentenced. See *State v. Deng Kon Tong*, 805 N.W.2d 599, 601 (Iowa 2011) (discussion of the Court's two definitions of "convicted"). The employer's decision to terminate the claimant's employment in response to the quit notice did not transform the separation from a voluntary quit to a discharge. If the claimant had immediately established an unemployment insurance claim upon separating from the employer, she may have been eligible for benefits for the quit notice period, provided she met all other eligibility requirements. Because the claimant waited until the week of July 2, 2023 to establish the unemployment insurance claim, she could not be considered for benefits for the period prior to July 2, 2023. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The July 21, 2023 (reference 01) decision is MODIFIED only to correct the effective date of the voluntary quit. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective June 24, 2023. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.



James E. Timberland
Administrative Law Judge

August 15, 2023
Decision Dated and Mailed

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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>.

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 está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.