

Ross to sign a resignation form, the claimant asked to complete the form the following day. (Tr. 5, 10)
She did not clarify that she wasn't quitting. (Tr. 10)

The next day, the claimant worked her regular shift until break time at or around 10:00 a.m. (Tr. 8) Her immediate supervisor, Dorothy Hartley, pulled her aside to ask Ms. Ross to fill out the resignation form to which the claimant refused. When the employer informed her that the money she owed from a previous Panera loan would be taken out of her last check, the claimant acknowledged the same and left upset. (Tr. 8) She did not return. (Tr. 9)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) (2007) provides:

An individual shall be disqualified for benefits: *Voluntary Quitting*. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25 provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employer 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...

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).

Iowa Code section 96.6(2) (2003) provides, in pertinent part:

... If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The record contains conflicting testimony from both parties with regard to whether Ms. Ross voluntarily quit her employment or whether she was, in essence, discharged. The employer provides unrefuted testimony establishing that it was the claimant who initiated conversation about changing her hours to accommodate her 'other job', and that if such a change did not occur, she more than pointedly indicated she would have to quit. (Tr. 2, 5) Although the claimant unequivocally denies that she quit her employment, she admitted failing to clarify her intention in the face of Ms. Thorne's obvious acceptance of what she perceived to be Ms. Ross' verbal resignation. (Tr. 5, 10) If the employer is culpable of jumping to the conclusion, then it was the claimant's overt and admittedly, intentional acquiescence that corroborated the employer's belief she was resigning by Ms. Ross' agreement to sign the resignation form the following

day. (Tr. 10) The claimant's renegeing to sign the document was tantamount to her withdrawing her resignation, which the employer is not obligated to accept. The court in Langley v. Employment Appeal Board, 490 N.W.2d 300 (Iowa App. 1992) held that the employer is under no obligation to accept an employee's withdrawal of their resignation. The idea being that the employer should be able to adjust their workforce as needed, and could not be bound to wait for indecisive employees to determine whether or not they were really going to quit.

In the case at hand, Ms. Ross' testimony that she preferred not to sign a resignation form on the day before her actual separation is indicative that she sought to buy some time to rethink her options, which was unbeknownst to the employer. The fact that she, admittedly, lied about having another job (Tr. 10) as the reason for her requested change of hours seriously diminishes her credibility. Additionally, the claimant's deliberate stealth in being upfront with the employer "... because she was frustrated..." with regard to the signing of her resignation form further impugns her credibility. (Tr. 10) For these reasons, we conclude that the claimant chose to quit because she, admittedly, no longer liked her work environment (Tr. 12), nor the hours she couldn't change. See, 871 IAC 24.25(18) & (21). Unfortunately, these reasons do not constitute good cause attributable to the employer.

DECISION:

The administrative law judge's decision dated September 20, 2007 is **REVERSED**. The claimant voluntarily quit without good cause attributable to the employer. Accordingly, she is denied benefits until such time she has worked in and was paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(1)"g". Although this decision disqualifies the claimant for receiving benefits, those benefits already received shall *not* result in an overpayment

Elizabeth L. Seiser

Mary Ann Spicer

AMG/fnv

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge with the exception of her reliance on Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993) as supporting authority. I would delete the reference to Cobb because the case at hand does not involve a health-related issue.

John A. Peno

AMG/fnv