

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JACQUELINE CORNEJO DE GARZA**  
Claimant

**SUKUP MFG CO INC**  
Employer

**APPEAL 16A-UI-08719-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/17/16**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 4, 2016, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on August 29, 2016. The claimant Jacqueline Cornejo de Garza participated and testified with the assistance of a Spanish interpreter with CTS Language Link. The employer Sukup Manufacturing participated through Human Resource Generalist Mary Amsbaugh and Human Resource Assistant Ashley Silvey. Claimant's Exhibit A was received into evidence.

**ISSUE:**

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an assembler in general production from May 20, 2013, until this employment ended on June 28, 2016, when she voluntarily quit.

On May 20, 2016, a meeting was held with claimant, Amsbaugh, and Silvey to discuss work restrictions claimant had following an injury. A Spanish interpreter was also present. During the meeting claimant was asked to sign a copy of the employer's Temporary Restricted Duty Policy. (Exhibit A). The policy was provided to claimant in both English and Spanish. The policy notified claimant that she was responsible for following her work restrictions. Claimant believed that if she signed the policy it would somehow be used by the employer in a worker's compensation case and therefore refused to sign. It was explained to claimant that if she did not sign the document, she needed to go home and would not be allowed to return to work until she was released without restriction. Claimant testified she assumed this meant she had been fired and went home. No one from the employer actually told claimant she had been fired.

Following the meeting, the employer sent claimant FMLA paperwork, so she could apply for job protected leave until she could return to work without restriction. Claimant filled out the paperwork and returned it to the employer. The paperwork indicated that claimant was expected to be released to return to work without restriction on June 23, 2016, subject to a follow-up appointment on June 22. Claimant made no further attempts to contact the employer. On June 23, 2016, based on the information in her FMLA paperwork, the employer expected claimant to return to work. Claimant did not return to work and did not contact the employer with an update on her medical situation. Claimant failed to contact the employer the next three consecutive work days as well. After more than three days of not coming to work without contacting the employer, claimant was separated from employment in accordance with the employer's no-call/no-show policy. This policy is located in the employee handbook, which claimant received a copy of during her orientation.

Claimant testified she did not contact the employer because she had not yet been released to return to work and believed she had already been separated from employment. According to claimant, when she went to the doctor she was told she could not be seen because her insurance had been cancelled. Silvey testified claimant was covered under the employer's insurance through June 30, 2016, and therefore should have been covered for her June 22 follow-up appointment.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to employer.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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 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). 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). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

Here, claimant believed she had been terminated on May 20, 2016 when she was told to go home after refusing to sign a document agreeing she would follow her work restrictions. No one told the claimant she had been terminated and the employer later sent her FMLA paperwork to provide for job protected leave until her injury had fully healed. These actions indicate the employer clearly considered claimant to be an employee following the May 20 meeting. The employer expected claimant to return to work on June 23, 2016, the date her paperwork indicated she was expected to be cleared to return without restriction. Claimant did not report to work because she believed she had already been terminated. Since claimant did not follow up with management personnel or human resources, and her assumption of having been fired was erroneous, the failure to continue reporting to work was an abandonment of the job. Benefits are denied.

**DECISION:**

The August 4, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to employer. Benefits are withheld until such time as she is otherwise eligible.

---

Nicole Merrill  
Administrative Law Judge

---

Decision Dated and Mailed

nm/