

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELVIRA GAMINO
Claimant

TOM LOVELACE COMPANY LLC
Employer

**APPEAL 20A-UI-08203-HP-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/05/20
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Claimant Elvira Gamino filed an appeal from a June 26, 2020 (reference 01) unemployment insurance decision that denied benefits for voluntarily quitting her work with Tom Lovelace Company, LLC (“Papa Murphy’s”) on April 3, 2020. The parties were properly notified of the hearing. A telephone hearing was held on August 25, 2020. Gamino appeared and testified. Andy Mantis and Jenn Adamson appeared and testified on behalf of Papa Murphy’s. I took administrative notice of the claimant’s unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

On June 14, 2018, Gamino commenced employment as a crewmember for Papa Murphy’s. Papa Murphy’s promoted Gamino to assistant manager on August 28, 2018. Katie Blake was Gamino’s immediate supervisor.

Gamino last worked for Papa Murphy’s on March 24, 2020. She was scheduled to work March 27 through 31, 2020, April 2, 2020, and April 3, 2020. On March 26, 2020, Gamino sent Blake a text message informing her she had a fever and was throwing up, stating she believed she might have Covid-19, and reporting she was going to be absent from work. Gamino reported Blake told her that would be fine. Gamino dropped her cellular telephone in the toilet on March 27, 2020. She reported she ended up being sick for five days.

On April 1, 2020, Gamino felt better. She waited to go into the store until April 3, 2020, when she had been fever free for twenty-four hours. Gamino spoke with Blake on Friday, April 3, 2020. Blake told her she could start up work again the following week, on Tuesday, April 7, 2020. No contrary evidence was produced at hearing.

Gamino testified on April 5, 2020, Blake contacted her and told her that Mantis said she was fired.

Mantis testified Gamino was a no call, no show for three days on March 29, 2020, March 30, 2020, and March 31, 2020, and that Papa Murphy's believed she had voluntarily quit. Mantis testified he did not have any record that Gamino told Blake she was ill. Mantis further testified he did not have any record Gamino returned to the store on April 3, 2020 and spoke with Blake. Blake did not appear as a witness at hearing.

Adamson testified Papa Murphy's has an employee handbook that governs sick days or leave. Adamson reported the employee handbook does not have a specific policy informing employees that if they do not call or show up to work three days in a row they will be deemed to have voluntarily quit. The employee handbook was not produced at hearing.

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: . . . If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department." The Iowa Supreme Court has held a "'voluntary quit' means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer." *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires "an intention to terminate the employment relationship accompanied by an overt act carrying out the intent." *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). "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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016).

871 Iowa Administrative Code -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 following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

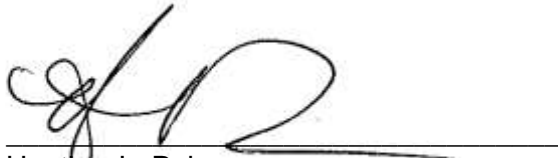
24.25(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The record does not establish Gamino was absent for three days without giving notice to Papa Murphy's in violation of a company rule. Papa Murphy's does not have a specific rule that notifies an employee that if the employee does not show up to work or call in for three consecutive days the employee will be considered to have voluntarily quit.

Gamino testified she was absent due to symptoms consistent with Covid-19 and that she informed Blake she was going to be absent and Blake approved her absence. Gamino testified after she had been free of a fever for twenty-four hours she went into the store and spoke with Blake and Blake told her she could return to work the following week on April 7, 2020. Blake contacted her on April 5, 2020, and told her she had been terminated. While Papa Murphy's had the right to terminate Gamino's employment, her absences do not disqualify Gamino from receiving unemployment insurance benefits. Benefits are granted.

DECISION:

The June 26, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is reversed in favor of the claimant/appellant. Benefits are allowed, provided the claimant is otherwise eligible.



Heather L. Palmer
Administrative Law Judge
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September 1, 2020
Decision Dated and Mailed

hlp/sam