

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JOY A WINFIELD

Claimant

APPEAL NO. 12A-UI-08692-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC

Employer

OC: 08/14/12

Claimant: Appellant (4-R)

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Admin. Code r. 871-24.27 – Voluntary Quitting – Part-time Employment

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 3, 2012 (reference 08) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on August 14, 2012. Claimant participated. Employer participated through administrator, Dorinda Krueger and dietary supervisor, Yvonne Kleppe. The employer's other witnesses were not called because they did not have relevant or disputed information to offer. The exhibit was not included as it was repetitive or not disputed.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to employer?

Did employer discharge 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 part time as a dietary and housekeeping aide from mid-March 2012 and was separated from employment on June 3. She gave a notice of intent to resign effective June 11, 2012 and was fired before the effective date of the separation. She gave her notice of resignation because she wanted more pay because the employer added a lunch menu with grilled items and she had only been grilling breakfast items. She thought the work was overwhelming and fast-paced. She was also in some pain while working, specifically mopping but did not have medical advice to quit. She told the employer because she found another job at a local gas station but did not have that job arranged at the point of separation. On June 3 she did not request medical accommodation but told Kleppe she was unable to mop or carry the laundry basket downstairs because of pain. Kleppe did not tell her there was more work to perform before she could leave at the end of her shift but fired her for not putting away dishes or helping her coworker.

The administrative record shows that the claimant has not requalified for benefits and had other base period wages but the record is unclear as to whether she is otherwise monetarily eligible.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the part-time employment without good cause attributable to the employer, and was discharged for no disqualifying reason prior to the intended resignation date.

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 Code § 96.5-1-g 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. But the individual shall not be disqualified if the department finds that:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

871 IAC 24.25(38) 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(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.

Claimant's decision to quit because she did not want to grill items at lunch was not a good cause reason attributable to the employer. Because the discharge was in response to a resignation notice no misconduct is established and since the employer terminated the employment relationship in advance of the resignation notice effective date, the claimant is entitled to benefits from the date of termination until the effective date of the proposed resignation.

Since the record is unclear as to whether claimant is otherwise monetarily eligible after deletion of these wage credits, the issue is remanded to determine if she is eligible for benefits beyond June 9, 2012.

DECISION:

The July 3, 2012 (reference 08) decision is modified in favor of the appellant. The claimant voluntarily left the part-time employment without good cause attributable to the employer and has not requalified for benefits but may be otherwise monetarily eligible. Benefits are allowed from June 3 until June 9, 2012. Thereafter, benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount unless she is otherwise monetarily eligible for benefits based upon the quitting of part-time employment.

REMAND: The monetary eligibility issue after the quit of this part-time employment (employer account number 064959) as delineated in the findings of fact is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css