

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA R MCDONOUGH

Claimant

APPEAL NO. 10A-UI-12816-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MONROE COUNTY PROFESSIONAL MGMT

Employer

OC: 10/04/09

Claimant: Respondent (1)

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated September 9, 2010, reference 02, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 29, 2010. The claimant participated. The employer participated by Jeff Weldon Finance/IT. The record consists of the testimony of Amanda McDonough and the testimony of Jeff Weldon.

ISSUE:

Whether the claimant's separation of employment was for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a non-profit organization that provides services to mentally and physically challenged individuals. The claimant was hired on December 31, 2009, as a part-time direct service provider.

The events that led to the claimant's separation from employment began on May 28, 2010. The claimant was arrested for OMVUI. She was scheduled to work on May 31, 2010. She called her employer to report that she would be unable to come to work. The claimant was then seen at a party on May 31, 2010.

On June 1, 2010, the claimant was called in to Judy Ahn's office. Ms. Ahn made the statement to the claimant that "this job was not working out." The claimant responded that she didn't want to work for a company that backstabs and lies. The claimant left the office. She felt that she had been terminated. Ms. Ahn did not testify at the hearing.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The first issue to be determined is the nature of the separation. The claimant testified that she never quit. She thought that she had been terminated when Judy Ahn made the statement to her that "this job is not working out." The claimant then replied that she did not want to work for a company that backstabs and lies. Ms. Ahn and the claimant had been discussing the fact that the claimant had called off work on May 31, 2010, and was then seen at a party. The claimant testified that she only went to the party to pick up a friend who was intoxicated and give him a ride home. A reasonable inference from this testimony is that the claimant was upset that someone had informed the employer she had been at the party. The claimant could have reasonably assumed that since Ms. Ahn brought up the fact that she had called in and was then seen at the party, the employer was terminating her. The claimant was adamant that she did not quit. Ms. Ahn did not testify at the hearing. Mr. Weldon could only repeat what Ms. Ahn told him, which was that she did not terminate the claimant.

The administrative law judge concludes that the claimant did not quit her job but rather reasonably assumed that she had been terminated. There is insufficient evidence in this record that the claimant was terminated for disqualifying misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's decisions dated September 9, 2010, reference 02, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw