

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BARBARA J BURTON**  
Claimant

**APPEAL NO. 13A-UI-07972-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ANOTHER DEDUCTION LLC**  
Employer

**OC: 05/19/13**  
**Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Barbara Burton filed a timely appeal from the July 2, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 13, 2013. Ms. Burton participated and presented additional testimony through Lolita Payne and Sharick Colwell. Theresa Harris represented the employer and presented additional testimony through Cris McNeal.

**ISSUE:**

Whether Ms. Burton separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a tax preparation business. The employer's business is in operation year round, but scales up each tax season when the employer operates satellite offices. The employer employs temporary full-time office managers to run those offices. Claimant Barbara Burton began working for the employer as an office manager during the 2012 tax season. Ms. Burton returned to the employer on January 3, 2013 to work for the employer as the full-time, salaried office manager of the employer's branch on West Kimberly Road in Davenport. Theresa Harris, President and co-owner, was Ms. Burton's immediate supervisor. Ms. Burton would make the weekly work schedule for the Kimberly Road branch and then electronically forward the schedule to Ms. Harris for Ms. Harris' approval. Ms. Burton would schedule her own work hours, subject to Ms. Harris' approval. Ms. Harris would make whatever changes to the proposed work schedule she deemed necessary and would then publish the work schedule. Each employee would receive an email alerting them to the published work schedule.

At the time Ms. Burton returned to the employment in January 2013, she told Ms. Harris that she was about to start college coursework. Ms. Burton discussed the demands of the office manager position and Ms. Burton's college plans with Ms. Burton at that time and Ms. Burton assured Ms. Harris she could handle both. The college coursework involved two classes, six semester hours, and was online in nature. Ms. Burton would have to take weekly tests for the classes. The tax preparation business required Ms. Burton's full-time efforts and often required weekend work in addition to work during the regular work week. The employer's Kimberly Road

branch was open seven days a week during tax season. Tax season had its peak periods. The first of these started at the end of January and went into February, as workers received their W-2 forms. The second peak season was toward the end of the tax filing season as the filing deadline loomed. The 2013 tax season was complicated by federal governmental action that delayed the start of e-filing of tax returns.

During the week leading up to Saturday, February 23, 2013, Ms. Harris was in contact with Ms. Burton about the need to better staff the Kimberly office on Saturday, February 23. Ms. Burton had prepared a proposed schedule with only one new staff member manning the branch that day. Ms. Harris had begun discussing the understaffing issue with Ms. Burton at the time Ms. Harris reviewed and published the schedule for that week. Ms. Harris told Ms. Burton that she would have to find additional help to appropriately staff the office that Saturday. Ms. Burton ended up being away from work two days that week due to dental issues. When she returned, Ms. Harris attempted to continue the conversation about the understaffing issue.

On Friday February 22, Ms. Harris went to the Kimberly Road branch to deliver supplies, to speak with Ms. Burton about complaints she had received from customers and staff about Ms. Burton's tone of voice and perceived demeanor, and to address the February 23 staffing issue. Ms. Burton had made plans to leave on a mini-vacation that weekend without discussing those with Ms. Harris. Ms. Burton had rented a car and planned to travel to Chicago on Saturday morning to see her aunt. Ms. Burton planned to return to work Monday afternoon. When Ms. Harris discussed with Ms. Burton the complaints she had received from customers and staff about Ms. Harris' tone of voice and perceived demeanor, Ms. Burton did not receive the information well. Ms. Harris asserted instead that that was just the way she was. When the discussion turned to the staffing issue for that Saturday, Ms. Burton told Ms. Harris she had arranged for another new employee to assist in the office on Saturday. Ms. Harris found that proposal unacceptable in light of the level of business expected in the office that Saturday and the need to provide training to an employee in that office that day. Ms. Harris told Ms. Burton that she expected Ms. Harris to work eight hours on Saturday. Ms. Burton told Ms. Harris she had made other plans and asked whether Ms. Harris would approve her working until 1:00 p.m. Ms. Harris indicated she would not approve Ms. Burton working just the partial day and Ms. Burton acquiesced in working the eight hours on Saturday.

After Ms. Harris had finished her business at the Kimberly office she departed from that office and returned to the main office. Later that day, Ms. Burton sent Ms. Harris an email indicating a desire to come to the main office and speak with Ms. Harris. Ms. Burton went to the main office and met with Ms. Harris privately. Ms. Burton told Ms. Harris that she was disappointed that Ms. Harris had not offered any positive comments when she had come to the Kimberly Road branch that day. Ms. Harris told Ms. Burton that she was sorry she felt that way, but that she had come to the branch primarily to address complaints she had received and had not had positive news to convey at the time. Ms. Burton said that she was sorry that her voice was the way it was but that she could not help it. Ms. Harris said she understood, but that when Ms. Harris received complaints, she had to act on them. Ms. Burton said that she was tired of the customer and coworker complaints and could not change her personality. Ms. Burton said she had plans for Saturday and asked to work a half day. Ms. Harris told Ms. Burton that that would still leave the office understaffed. Ms. Burton said she felt she needed to quit. Ms. Harris said okay. Ms. Burton told Ms. Harris that she could not believe she had come to Ms. Harris's office to say she was disappointed about the earlier encounter and now was quitting her job. Ms. Burton then left the main office. Upon Ms. Burton's departure from the building, Ms. Harris told the staff at the main office that she and they would have to arrange coverage for the Kimberly Road branch because Ms. Burton had just quit.

About ten minutes after Ms. Burton left the main office, Ms. Burton called Ms. Harris from the parking lot of the main office. Ms. Burton said she was not a quitter and did not want to quit. Ms. Harris told Ms. Burton that she had already quit and that they would leave it at that. After

Ms. Burton spoke again to Ms. Harris, Ms. Burton called her daughter and said she had just been fired.

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

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). 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.

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.

871 IAC 24.25(25) provides:

(25) The claimant left to take a vacation.

871 IAC 24.25(28) and (37) provide:

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 section 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 section 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:

(28) The claimant left after being reprimanded.

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

871 IAC 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

The weight of the evidence establishes that Ms. Burton voluntarily quit and was not discharged from the employment. Ms. Burton went to the main office on February 22 to discuss with Ms. Harris her displeasure with the earlier encounter, her displeasure with the staff and customer complaints, and to renew her request for Saturday, February 23 off so she could leave on vacation. Ms. Harris did not say anything to make Ms. Burton feel better about the complaints. Ms. Burton perceived the complaints about her voice and perceived demeanor as an attack on her character. Ms. Harris did not back down from her expectation that Ms. Burton, as the full-time salaried office manager, would appropriately staff the office on February 23. Ms. Harris wanted start her mini-vacation. Ms. Burton told Ms. Harris she was quitting. Ms. Harris acknowledged and accepted the resignation. Ms. Burton then departed the building. Ms. Burton subsequently changed her mind about quitting and attempted to rescind the quit. The employer was under no obligation at that point to allow Ms. Burton to rescind her quit.

The administrative law judge had held many hearings involving tax preparation firms and their operations during tax season. Those same hearings have also involved claimants who employed with those tax firms during tax season. The administrative law judge does not find this employer's expectation that Ms. Burton appropriately staff the office on February 23 to be unreasonable. On the other hand, given the nature of the work, the administrative law judge finds Ms. Burton's expectation that she would be able to take time away from the temporary work on short notice in the middle of tax season to be unusual and somewhat unreasonable. The evidence does not indicate that the employer created any intolerable or detrimental working condition by expecting Ms. Burton to work on Saturday, February 23.

The weight of the evidence establishes a voluntary quit that was without good cause attributable to the employer. Ms. Burton is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Burton.

**DECISION:**

The agency representative's July 2, 2013, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/css