

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**DENISE M LABUDDA**  
Claimant

**APPEAL 22A-UI-19025-DS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COMMUNITY FOUNDATION OF DUBUQUE**  
Employer

**OC: 10/16/22  
Claimant: Respondent (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Admin. Code r. 871-24.26(19) – Voluntary Quit  
Iowa Admin. Code r. 871-24.26(21) – Forced Resignation

**STATEMENT OF THE CASE:**

On November 17, 2022, the employer filed an appeal from the November 9, 2022, (Reference 01) unemployment insurance decision that allowed benefits. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for 11:00 a.m. on January 3, 2023. The claimant participated personally and with Shane Labudda. The employer participated through President and CEO Nancy Van Milligen. Employer's Exhibits A-E were admitted to the record. Claimant's Exhibits AA-GG were admitted to the record. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Did claimant voluntarily quit the employment without good cause attributable to employer?  
Is the claimant overpaid benefits?  
Should the claimant repay benefits or should the employer be charged for benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant worked for the Community Foundation of Greater Dubuque from November 8, 2021, until October 14, 2022. At the time of the separation, the claimant was the Chief of Staff and reported to Nancy Van Milligen. On September 28, 2022, the leadership staff of the Foundation met off-site for a leadership retreat. At this meeting, there was negative interaction between the claimant and Amy Manternach, who serves the employer as COO. The employer felt that these negative interactions were due to the claimant's attitude and elected to remove her from the leadership team. On September 30, 2022, Van Milligen met with the claimant and presented her with the option to resign or be terminated from the employment. The claimant did not have an option to continue the employment, however, there was discussion regarding a possible clerical position in the event the claimant wanted to remain with the employer. This would have been a significant demotion, and nothing conclusive was discussed in this regard. The claimant signed an agreement, dated October 7, 2022 and labeled "Release and Employment Separation Agreement," which provided for the payment of \$4,942.00 to the claimant in consideration of and

contingent upon her execution of the release. The claimant had received no disciplinary or corrective action prior to the meeting on September 30, 2022, and the employer is unable to demonstrate misconduct in the context of the claimant's employment. The client's job was in jeopardy when she was presented with the option to resign in lieu of termination.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant did not quit the employment but was discharged by the employer. Disqualifying misconduct has not been established, and benefits are allowed.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 Admin. Code r. 871-24.25(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 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:

Iowa Admin. Code r. 871-24.26(21) 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:

- (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The claimant was compelled to resign. The employer prepared the resignation agreement and did not intend to retain the claimant as an employee. Had the claimant not signed the agreement, the claimant would have been discharged. This is not a voluntary quit for the purposes of eligibility for unemployment insurance benefits. Benefits are allowed.

**DECISION:**

The November 9, 2022, (Reference 01) unemployment insurance decision is AFFIRMED. The claimant was discharged from the employment, and benefits are allowed. The claimant is not overpaid benefits, and the employer's account may be charged.



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David J. Steen  
Administrative Law Judge  
Iowa Department of Inspections & Appeals  
Administrative Hearings Division - UI Appeals Bureau

January 9, 2023  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. *There is no filing fee to file an appeal with the Employment Appeal Board.*

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at [www.iowacourts.gov/efile](http://www.iowacourts.gov/efile). *There may be a filing fee to file the petition in District Court.*

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en [www.iowacourts.gov/efile](http://www.iowacourts.gov/efile). *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.