

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAILEE ESSER
Claimant

MIDWEST MECHANICAL INDUSTRIAL
Employer

APPEAL 20A-UI-06689-HP-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/22/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Claimant Kailee Esser filed an appeal from a June 18, 2020 (reference 01) unemployment insurance decision that denied benefits for voluntarily quitting her work with Midwest Mechanical Industrial (“Midwest”) on March 15, 2020. The parties were properly notified of the hearing. A telephone hearing was held on August 3, 2020. Esser appeared and testified. Zachary Coleman testified on Esser’s behalf. Jeff Allen appeared and testified on behalf of Midwest. Exhibits 1 and 2 were admitted into the record. 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:

Nikki and Jeff Allen own Midwest. The Allens hired Esser to work as a nanny in their home to care for their youngest son. While Esser did not work on the premises of Midwest, she was an employee of Midwest who worked in the Allen’s home. Esser commenced her employment as a nanny with Midwest on March 5, 2018. Esser worked an average of fifty hours per week and she earned \$17.00 per hour, plus benefits.

On March 12, 2020, Esser told Jeff Allen was she sick and he told her to go home. Esser received paid sick leave on March 13, 2020. Esser’s husband is at risk for developing complications from Covid-19. Esser believed she and her husband were exhibiting symptoms consistent with Covid-19. On Sunday, March 15, 2020, Esser told Nikki Allen she and her husband were self-quarantining and she would not be at work on March 15, 2020. Nikki Allen told Esser she needed to show up for work on March 16, 2020.

Esser did not show up for work on March 16, 2020 or March 17, 2020. Midwest has a policy that if an employee fails to show up for work or call for three days, the employee is terminated. Esser did not attend work on March 16, 2020 or March 17, 2020. On March 18, 2020, Esser contacted

Nikki Allen about payment for guaranteed hours. Jeff Allen called her back and told Esser she and her husband had been terminated for job abandonment.

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 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:

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 Esser was absent for three days without giving notice to Midwest in violation of a company rule. Esser told Nikki Allen she was going to be absent on Monday, March 16, 2020. Esser did not call or show up for work on March 16, 2020, or March 17, 2020. On March 18, 2020, Esser contacted Nikki Allen to inquire about payment for guaranteed hours. Jeff Allen called her back and told Esser she and her husband had been terminated for job abandonment. I find Esser had provided notice on Sunday she would be absent on March 16, 2020. She also called on March 18, 2020 and had been in regular communication with Nikki Allen. While Midwest had the right to terminate Esser, her absences do not disqualify her from receiving unemployment benefits. Benefits are granted.

DECISION:

The June 18, 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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August 10, 2020
Decision Dated and Mailed

hlp/sam