

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIFFANY M KAYL**  
Claimant

**APPEAL NO: 09A-UI-15394-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QWEST CORPORATION**  
Employer

**OC: 09/13/09**  
**Claimant: Appellant (5)**

Section 96.5-1 – Voluntary Quit  
871 IAC 24.25(35) – Non-Job Related Illness

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated October 6, 2009, reference 01, that held she was discharged for misconduct on September 15, 2009, and benefits are denied. A telephone hearing was scheduled and held on November 16, 2009. The claimant, and her witness, Amanda Heineman, participated. Steve Zaks, Representative, Enoch Hayes, Sales Supervisor, and Greg Duncan, Team Leader, participated for the employer. Employer Exhibits 1 & 2, and Claimant Exhibits A and D, was received as evidence.

**ISSUE:**

The issue is whether the claimant voluntarily quit with good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge having considered the evidence in the record, finds: The claimant worked for the employer as a full-time CSR from February 21, 2008 to July 24, 2009 to August 26, 2009. The claimant suffers from emotional illnesses and she was on FMLA leave from August 4 to August 17, and short term disability leave from May 18 to August 24, 2009.

The claimant worked on August 25 & 26, and was on approved time-off on August 27, 2009. The claimant incurred six unauthorized absences from August 28 to Labor Day, September 7. The claimant did call the employer about her absences from August 27 to September 4.

The employer sent a certified letter to the claimant dated September 10 regarding her most recent absent on September 8. The employer requested the claimant to report to work by September 15 or face termination. When the claimant failed to report, the employer sent a certified letter dated September 15 to the claimant that she was terminated. The US Postal Service provided certified receipts for both letters that shows the claimant signature.

## **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.

871 IAC 24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The administrative law judge concludes that the claimant voluntarily quit employment without good cause attributable to the employer on September 15, 2009 due to a non-job-related illness that is not based on the advice of a physician.

The claimant admitted in the hearing that her decision not to return to employment after August 27 was not based on the recommendation of her physician. The claimant complained of co-worker harassment and a hostile work environment, but the employer counseled the co-workers about this conduct, and it occurred months before the claimant's separation from employment. The claimant offered no reasonable explanation for her failure to respond to the employer warning letter and/or her failure to contact the employer after September 4th.

**DECISION:**

The department decision dated October 6, 2009, reference 01, is modified. The claimant was not discharged, but voluntarily quit without good cause attributable to the employer on September 15, 2009. Benefits are denied until the claimant has worked in and is paid wages for insured work, equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

---

Randy L. Stephenson  
Administrative Law Judge

---

Decision Dated and Mailed

rls/pjs