

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LINDA M DOCKERY
Claimant

EGS CUSTOMER CARE INC
Employer

APPEAL 15A-UI-12836-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/18/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 10, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 8, 2015. Claimant participated. Employer did not participate.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a customer service representative from August 2013, and was separated from employment on October 23, 2015, by abandoning her job.

The employer has an attendance policy that if you miss a certain percentage days out of six months employees are automatically terminated. The employer has a call-in procedure where employees are to call a certain number and speak to the employer before the employee's shift begins if they are going to be absent. The policy also provides if you are out for more than three consecutive days you are automatically discharged.

Claimant was absent from work on August 19, 2015. Claimant was scheduled to work on August 19, 2015. Claimant called the employer and told it she would be absent because of emotional distress. The employer requested claimant provide a doctor's note. Claimant did not provide a doctor's note to the employer. Claimant also followed the employer's call-in on August 20, 22, 24, 25, and 26, 2015. On these days, claimant called the employer and told it she would be absent because of emotional distress. The employer requested claimant provide a doctor's note. Claimant did not provide a doctor's note for these absences.

The last time claimant followed the employer's call-in procedure was on August 26, 2015. Claimant thought the employer would have taken her off the schedule on August 19, 2015 or August 20, 2015. Claimant never called the employer and asked if she was on the schedule. Claimant thought that after the third day, if she did not have the doctor's note she did not need to follow the employer's call-in procedure. The employer did not notify claimant she was separated from employment until October 2015. On October 23, 2015, the employer called claimant's separation job abandonment.

After August 19, 2015, claimant discussed with human resources that she was going to be put on Family and Medical Leave Act (FMLA) leave by her doctor. Claimant spoke with human resources about Family and Medical Leave Act (FMLA) leave in October 2015. Claimant's psychiatrist spoke with the employer and decided to not place claimant on Family and Medical Leave Act (FMLA) leave because it was not a medical issue. Claimant's doctor sent a letter to the employer that claimant was not going to be on Family and Medical Leave Act (FMLA) leave a couple of days prior to October 23, 2015. Claimant did not provide a doctor's note for her absences or follow the employer's call-in procedure for her September 2015 and October 2015 shifts. Claimant's normal work schedule was Monday through Thursday and every Saturday.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer. Benefits are denied.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and **that were properly reported to the employer**. Iowa Admin. Code r. 871-24.32(7) (emphasis added); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding "rule [2]4.32(7)...accurately states the law."

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Claimant properly reported her absences because of illness to the employer from August 19, 2015 through August 26, 2015. However, each day claimant reported her illness, the employer requested a note from her doctor. Claimant failed to provide any doctor's note to the employer. After August 26, 2015,

claimant failed to properly follow the employer's call-in procedure and report her absences. Claimant was set to work Monday through Thursday and every Saturday, after August 26, 2015 until her separation on October 23, 2015. After August 26, 2015, claimant failed to report her absence and the reason for her absence to the employer. It is not persuasive that claimant thought she might be placed on Family and Medical Leave Act (FMLA) leave. Claimant still needed to follow the employer's call-in procedure, which she did follow initially. Furthermore, it was important for claimant to follow the call-in procedure because as it turned out, claimant's doctor did not believe she suffered from an illness that would qualify for Family and Medical Leave Act (FMLA) leave and so she was not placed on Family and Medical Leave Act (FMLA) leave. Claimant's failure to communicate her absences with the employer from August 27, 2015 through October 23, 2015 renders her separation job abandonment. While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

Furthermore, generally when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work or reporting their absences, the separation is considered a quit without good cause attributable to the employer. Claimant's argument that she thought she was discharged under two different policies in August 2015 is unpersuasive. Claimant never confirmed with the employer that she was discharged. Claimant never confirmed with the employer she was no longer supposed to report to work or report her absences. Furthermore, claimant continued to communicate with the employer about going on Family and Medical Leave Act (FMLA) leave after August 2015, even though she thought she had been discharged. Since claimant did not follow up with management personnel, and her assumption of having been fired was erroneous (claimant was separated on October 23, 2015), her failure to continue reporting to work was an abandonment of the job. Benefits are denied.

Even if claimant's separation was not job abandonment and her separation was a discharge for excessive absences; claimant clearly had excessive absences when she missed the entire month of September 2015 and a majority of October 2015 (until October 23, 2015) without properly reporting her absences. These absences would be considered excessive. Benefits are denied.

DECISION:

The November 10, 2015, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs