

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSEMARY C THOMPSON
Claimant

APPEAL NO. 11A-UI-03906-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABM JANITORIAL SERVICES NORTH
Employer

OC: 02/20/11
Claimant: Appellant (4)

Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

STATEMENT OF THE CASE:

Rosemary Thompson filed a timely appeal from the March 22, 2011, reference 01, decision that denied benefits in connection with a January 3, 2011 voluntary quit from ABM Janitorial Services North. After due notice was issued, a hearing was held on April 19, 2011. Ms. Thompson participated. The employer was aware of the hearing, but did not follow the hearing notice instructions to provide a telephone number for the hearing. Claimant's Exhibit A was received into evidence. The employer contacted the administrative law judge after the hearing record had closed. The administrative law judge concluded, pursuant to 871 IAC 26.14(7)(c), that there was not good cause to re-open the record.

ISSUES:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the claimant voluntarily quit the employment for the sole purpose of accepting other, better employment and performed work for the new employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Rosemary Thompson was employed by ABM Janitorial Services North as a full-time housekeeper at the Iowa Veterans' Home in Marshalltown until January 3, 2011, when she voluntarily quit to accept a resident aide position at the Iowa Veterans' Home. Ms. Thompson worked two days for the new employer and then separated from the new employer.

REASONING AND CONCLUSIONS OF LAW:

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 § 96.5(1)(a) provides as follows:

Causes for disqualification.

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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, *and the individual performed services in the new employment*. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

[Emphasis added.]

The administrative law judge must follow the plain language of the statute.

The evidence in the record establishes that Ms. Thompson voluntarily quit the employment with ABM Janitorial Services North on January 3, 2011 for the sole purpose of accepting other employment and performed work for the new employer. The voluntary quit from the ABM Janitorial was without good cause attributable to that employer. Accordingly, ABM Janitorial will not be charged for benefits paid to Ms. Thompson. Because the voluntary quit was for the purpose of accepting other employment, and because Ms. Thompson actually performed work for the new employer, the separation from ABM Janitorial would not disqualify Ms. Thompson for unemployment insurance benefits. Ms. Thompson is eligible for benefits, provided she is otherwise eligible.

DECISION:

The Agency representative's March 22, 2011, reference 01, decision is modified as follows. The claimant voluntarily quit the employment without good cause attributable to the employer. The employer's account shall not be charged. The claimant voluntarily quit to accept new employment. The claimant is eligible for benefits, provided she is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs