

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA G DAVIS
Claimant

APPEAL NO. 09A-UI-10596-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLYING J
Employer

OC: 06/07/09
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 14, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 10, 2009. Claimant participated. Employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Amanda Davis.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, makes the following findings of fact:

The claimant worked as a full time hostess and waitress for the employer at its location in Wayland, Missouri. She started her employment in March 2009. Her last day of actual work was May 30, 2009. The claimant was scheduled to work on June 1, 2009, but she was ill. She found someone else to take her place.

The claimant was pregnant at this time and had been taken off work previously due to complications with her pregnancy. On June 4, 2009, the claimant saw her doctor and told her doctor that she was scheduled to work for an eight to nine hour shift. Her doctor advised her that she should take the day off. When the claimant called her employer, however, her employer informed her that if she did not come into work as scheduled, she would be terminated. She did not come into work and was discharged by the employer.

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The evidence in this case did not show that the claimant initiated a separation of employment. Instead the evidence established that the claimant was terminated because she failed to show up for work on June 4, 2009, on the advice of her physician. The claimant notified the employer about her physician's advice and it was the employer who told the claimant that she was terminated if she did not show up for work. There is no evidence of misconduct as the claimant's absence would be considered excused. The claimant is entitled to benefits if she is otherwise eligible.

DECISION:

The decision of the representative dated July 14, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs