

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VICTORIA LOZANO**  
Claimant

**APPEAL NO: 08A-UI-11532-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TJ & ME INC**  
Employer

**OC: 10/05/08 R: 02  
Claimant: Appellant (1)**

Iowa Code § 96.5-1 - Voluntary Quit  
871 IAC 24.25(4) - Voluntary Quit Without Good Cause

**STATEMENT OF THE CASE:**

Victoria Lozano (claimant) appealed an unemployment insurance decision dated December 1, 2008, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with TJ & ME, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 23, 2008. The claimant participated in the hearing. The employer participated through owner Terri Nelson and Gloria Miller, Store Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time cashier from January 11, 2008 through July 22, 2008 when she was considered to have voluntarily quit. The employer's attendance policy provides an employee is considered a voluntary quit if she is a no-call/no-show for three consecutive workdays. The claimant was a no-call/no-show on July 18, 19 and 22 and was considered to have voluntarily quit her employment. She missed a lot of work due to illness and called in her absences at the beginning of her employment. However, she was also a no-call/no-show on June 16, June 25, and July 5

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive

unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

871 IAC 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 § 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 § 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it when she failed to call or report to work for three consecutive days ending July 22, 2008. The claimant denies failing to call or report to work but she admitted that she cannot remember the days she was absent. The employer's evidence was found more credible. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She failed to meet that burden and benefits are therefore denied.

**DECISION:**

The unemployment insurance decision dated December 1, 2008, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs