

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHERRY L STONER**  
Claimant

**APPEAL NO. 08A-UI-08210-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**USA HEALTHCARE – NEWTON LLC  
EMBASSY MANOR CARE**  
Employer

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

Iowa Code section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Sherry Stoner filed a timely appeal from the September 10, 2008, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on September 29, 2008. Ms. Stoner participated. The employer provided a telephone number and the name of a representative, but then submitted written notice that the employer would not be participating in the appeal hearing. Exhibit A was received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Sherry Stoner was employed by USA Healthcare – Newton as a full-time Certified Nursing Assistant (C.N.A.) on two occasions. The first period of employment was from August 2005 until January 2007 and ended when Ms. Stoner voluntarily quit.

The second period of employment started on July 4, 2008 and ended on August 5, 2008, when Ms. Stoner voluntarily quit. On August 4, 2008, Ms. Stoner was absent because her granddaughter was ill. Ms. Stoner is guardian to her granddaughter. On August 5, Ms. Stoner notified Director of Nursing Cindy Geuyer that she would be absent for at least part of her shift because she had been up all night with a pain in her side and needed to see the doctor. Ms. Stoner was scheduled to work at 2:00 p.m. Ms. Stoner told the Director of Nursing that she would not be in at 2:00 p.m., but would try to come to work after her doctor appointment. The Director of Nursing told Ms. Stoner that she expected her to find her own replacement. Ms. Stoner asked for employee numbers and asked for time to get a pen and paper. The Director of Nursing said she would find a replacement and terminated the call.

Ms. Stoner then called the workplace again and spoke with Administrator Glenn Williams. Mr. Williams asked whether Ms. Stoner would be appearing for work. Ms. Stoner said she did not know and would be seeing the doctor at 2:00 p.m. Mr. Williams told Ms. Stoner that she probably would not need to worry about it and that once the State was done with its annual review of the facility, Ms. Stoner would probably be discharged. The State representatives had been at the facility for five days and were expected to be at the facility the next week. Ms. Stoner asked why she was probably going to be discharged and Mr. Williams declined to provide an answer. Ms. Stoner then said, "I don't think so, I quit." Ms. Stoner took a doctor's excuse with her when she went to collect her paycheck on September 6, 2008. Mr. Williams told Ms. Stoner that he did not need the note. Ms. Stoner did not return to the employment.

#### **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.

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.

A person who voluntarily quits in response to a reprimand is presumed to have voluntarily quit without good cause attributable to the employer. See 871 IAC 24.25(28).

Where a person is compelled to resign or face immediate discharge, the separation is not a voluntary quit. See 871 IAC 24.26(21).

This case does not involve a quit in lieu of an immediate discharge. The evidence indicates that the employer was displeased by Ms. Stoner's absence on August 5, 2008. The evidence indicates that the employer made a reference to Ms. Stoner facing probable discharge at some point in the near future. The evidence does not indicate that the employer in fact discharged Ms. Stoner or told Ms. Stoner that she would in fact be discharged. The evidence indicates that Ms. Stoner beat the employer to the punch by voluntarily quitting the employment. Ms. Stoner voluntarily quit in response to a reprimand.

Ms. Stoner voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Stoner is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Stoner.

**DECISION:**

The Agency representative's September 10, 2008, reference 04, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw