

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANA M LINDSEY
Claimant

APPEAL NO. 11A-UI-05635-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VIKING MAGAZINE SERVICE INC
Employer

OC: 03/06/11
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 22, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 23, 2011. Claimant Dana Lindsey participated. Natalie Kelly, Assistant Call Center Manager, represented the employer. Exhibit Two was received into evidence.

ISSUE:

Whether Ms. Lindsey separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Dana Lindsey worked for the employer on multiple occasions. Ms. Lindsey's most recent period of employment began at the start of July 2010. Ms. Lindsey most recently performed work for the employer on November 30, 2010. The employer is a telemarketing firm that sells magazine subscriptions. During the most recent period of employment, Ms. Lindsey worked part-time hours. The hours were cut back in August 2010 due to problems with Ms. Lindsey's attendance. Ms. Lindsey ceased appearing for work or making contact with the employer after she worked her shift on November 30, 2010. Ms. Lindsey had been a no-call/no-show on November 25 and was a no-call/no-show on Thursday, December 2, 2010. On December 3, the employer documented a voluntary quit. The employer did not hear from Ms. Lindsey again.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover,

termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

The parties presented dramatically different versions of the events leading to Ms. Lindsey's separation from the employment. The administrative law judge found Ms. Lindsey's version highly implausible and Ms. Lindsey's testimony not credible. On the other hand, the employer provided a straightforward explanation of the employer's policies, log-in procedures, and employee compensation procedures. In addition, the employer provided a business record of Ms. Lindsey's time reporting. There is nothing to suggest that the business record has been altered in any way. The business record squarely refutes Ms. Lindsey's version of events. The weight of the evidence indicates that the employer's testimony is credible and that Ms. Lindsey's testimony was fabricated. The weight of the evidence establishes a voluntary quit, not a discharge or layoff.

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.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27. Workforce Development records indicate that Ms. Lindsey lacks sufficient other based period wage credits to be eligible for benefits.

The weight of the evidence establishes that Ms. Lindsey voluntarily quit the employment for personal reasons and indicated the voluntary quit by ceasing to show up or making further contact with the employer after November 30, 2010. Ms. Lindsey 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. Lindsey.

DECISION:

The Agency representatives April 22, 2011, reference 01, decision is reversed. 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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