

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

WANDA TROVATO
2458 LIBERTY AVE
MISSOURI VALLEY IA 51555

OMAHA AIRPLANE SUPPLY COMPANY
D/B/A OMAHA AIRPLANE SUPPLY
PO BOX 19084
OMAHA NE 68119-9084

Appeal Number: 05A-UI-03452-RT
OC: 02-27-05 R: 01
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Wanda Trovato, filed a timely appeal from an unemployment insurance decision dated March 24, 2005, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on April 20, 2005, with the claimant participating. Harold Cheesman, Vice-President, participated in the hearing for the employer, Omaha Airplane Supply Company, doing business as Omaha Airplane Supply.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time warehouse worker from early December 2004 until she separated from her employment on February 24, 2005. On that day the claimant came to work with her arm in a sling and on ice and asked the Parts Manager, Don Collins, for the week off. Mr. Collins explained to the claimant that she had missed a lot of work and that she was not doing her job properly. Mr. Collins did not tell the claimant that she was fired or discharged. The claimant then walked into the office of the employer's witness, Harold Cheesman, Vice-President, and told him that she would not be back to work or words to the effect indicating a quit. The claimant had never expressed any concerns to Mr. Cheesman about her working conditions nor had she ever indicated or announced an intention to quit to him or to anyone else at the employer, if problems she was having at work were not addressed by the employer. When the claimant was first hired she was informed about the job and informed that she would have to lift 75 pounds.

The claimant testified that she was discharged by Mr. Collins but then testified to several reasons for a quit including that Mr. Collins had nothing nice to say about her and that she wanted some time off because she had hurt her arm or at least wanted assistance so that she could keep working. The claimant had missed parts of a number of days in January and February for doctor's appointments for her and her son and to take her son to get a driver's license.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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.

871 IAC 24.25(21)(28) 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 section 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 section 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:

(21) The claimant left because of dissatisfaction with the work environment.

(28) The claimant left after being reprimanded.

The first issue to be resolved is the character of the separation. The employer's witness, Harold Cheesman, Vice-President, testified that the claimant voluntarily quit when she came into his office on February 24, 2005 and said something to the effect that she would not be back and indicated that she was quitting. The claimant concedes that she did this but testified that she believed she was discharged by the Parts Manager, Don Collins. However, the claimant even concedes that Mr. Collins never said she was fired or discharged. The claimant testified she believed she was discharged because Mr. Collins had nothing nice to say to her on the day in question when she had asked for some time or some assistance and he had indicated to her that she had missed a lot of work and was not doing her job properly. This does not appear to be a discharge but rather a reprimand. Further, as discussed below, the claimant's testimony is not credible. Accordingly, the administrative law judge concludes that the claimant voluntarily quit on February 24, 2005. The issue then becomes whether the claimant left her employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. Although the claimant first testified that she was discharged, she then entered into a discussion of a number of reasons precipitating her quit. This itself is inconsistent with the claimant's position that she was discharged. The claimant first said she was discharged or quit because Mr. Collins had nothing nice to say to her. The claimant then testified that she wanted some assistance with an arm that had been hurt at work and this was denied. The claimant first testified that she said something about having a week off and then later said only two days. The claimant at first denied missing any work and then finally conceded that she missed work but not complete days and finally conceded that she missed at least parts of five different days for doctor's appointments for her and her son and for her son to get a driver's license. The claimant's testimony is too inconsistent, evasive, and argumentative, to be credible. The administrative law judge concludes that the bottom line here was that the claimant quit because she was reprimanded by the Parts Manager, Don Collins, about her work performance and her absences but leaving work voluntarily because of a reprimand is not good cause attributable to the employer. It also appears that the claimant was dissatisfied with the work environment but this also is not good cause attributable to the employer.

The claimant complained that she was required to lift heavy items but conceded that when she was hired she was told that she was going to have to lift heavy items of 75 pounds at least occasionally. The claimant testified that she could not open the door or lift items and then later testified that she learned how to do that without hurting her arm. Even assuming that the claimant had hurt her arm, the administrative law judge does not believe that the claimant gave the employer any real opportunity to address her serious concerns before she quit. The evidence establishes that she asked for some time off or some assistance from Mr. Collins and when he reprimanded her for her work, she immediately quit. The claimant testified that she expressed concerns to several individuals but not to Mr. Cheesman. The administrative law judge cannot understand why the claimant would not express concerns about these matters to Mr. Cheesman if she was really concerned about them. The administrative law judge specifically notes that after talking to Mr. Collins and at least, according to her testimony, being discharged, she felt it necessary to go in and speak to Mr. Cheesman. If she felt it was necessary to talk to Mr. Cheesman about this, the administrative law judge believes the claimant should have expressed concerns about all of the other matters related to her

employment to Mr. Cheesman. Finally, even the claimant concedes she never indicated or announced an intention to quit to anyone if her problems at work were not addressed by the employer. The administrative law judge concludes that the claimant did not demonstrate by a preponderance of the evidence that her working conditions were unsafe, unlawful, intolerable or detrimental or that she was subjected to a substantial change in her contract of hire. She also never gave the employer an opportunity to address any of her concerns even assuming that her concerns were legitimate and real. Rather, the administrative law judge concludes that the claimant quit because she was reprimanded and she did not like the working conditions but as noted above this is not good cause attributable to the employer. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

DECISION:

The representative's decision of March 24, 2005, reference 01, is affirmed. The claimant, Wanda Trovato, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer.

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