

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTINA M WILLIS**  
Claimant

**APPEAL NO: 10A-UI-07072-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HCM INC**  
Employer

**OC: 04/11/10**

**Claimant: Respondent (5)**

Section 96.5-2-a – Discharge  
Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

HCM, Inc. (employer) appealed a representative's May 4, 2010 decision (reference 01) that concluded Christina M. Willis (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 1, 2010. The claimant participated in the hearing. Tom Kuiper of TALX Employer Services appeared on the employer's behalf and presented testimony from one witness, John Schuttinga. 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:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on November 19, 2005. She worked part time as a licensed practical nurse (LPN) at the employer's skilled nursing facility. Her last day of work was February 28, 2010.

The claimant had missed some days near the end of February due to some family medical issues. On about March 3 she spoke to the director of nursing and asked not to be scheduled for the month as she needed to schedule some further medical appointments. The director of nursing indicated that the claimant would be placed on a leave of absence status through the end of March and then she would be placed on on-call status; the claimant agreed. The claimant therefore did not work in March, although she came in on March 15 and completed the necessary monthly computerized in-service training.

On March 29 the claimant called in to indicate she was ready and available to be scheduled for shifts; she learned that her name was not even on the list of employees for scheduling. The director of nursing advised her at that time that her employment was ended.

## REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. A voluntary quit is a termination of employment initiated by the employee – where the employee has instigated the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has instigated the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A mutually agreed-upon leave of absence is deemed a period of voluntary unemployment. 871 IAC 24.22(2)j. However, if the end of the leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits, and conversely, if at the end of the leave of absence the employee fails to return at the end of the leave of absence and subsequently becomes unemployed the employee is considered as having voluntarily quit and therefore is ineligible for benefits. Id.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that she quit because she did not seek to return to work after February 28; the evidence does not support this assertion. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. Rather, the employer granted the claimant a leave of absence through the end of March and then declined to return her to work status. As the employer failed to reemploy the claimant after the leave of absence, she is considered laid off and eligible for benefits. 871 IAC 24.22(2)j.

## DECISION:

The representative's May 4, 2010 decision (reference 01) is modified with no effect on the parties. The claimant did not voluntarily quit and the employer did effectively lay off the claimant. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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