

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DESTINY D BARNHART
Claimant

APPEAL NO. 10A-UI-11216-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 07/11/10
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 5, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 27, 2010. Claimant participated. Employer participated by Gus Gurken, General Manager/Cedar Rapids store. The record consists of the testimony of Destiny Barnhart; the testimony of Gus Gurken; and Employer's Exhibits 1-4.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a Menard store located in Cedar Rapids, Iowa. The claimant was hired on September 22, 2009, as a part-time cashier.

On April 10, 2010, the claimant was informed that she needed to have surgery on her tonsils and adenoids and would be unable to work for two weeks. She would also not have a voice immediately after surgery. The procedure was scheduled for April 13, 2010. On either April 12, 2010, or April 13, 2010, the claimant contacted Steve Flower, the front end manager, and told him that she would be gone for two weeks for surgery and that she would call whenever she could. Mr. Flower told the claimant to keep him informed. The claimant thought that her leave had been excused and based on past practices, it would not be necessary for her to call in every day.

When the claimant attempted to access her work schedule via computer, she discovered that she had been locked out. She called Kim, one of the members of the management team. Kim informed the claimant that she had been terminated for failing to come to work and not calling in to report

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

There is no evidence in this case that the claimant intended to sever the employment relationship. She testified that she informed Steve Flower, the front end manager, that she was going to have surgery and would be off two weeks. Mr. Flower did not ask her for a doctor's excuse and told the claimant to keep them informed. Gus Gurken, the general manager, admitted that Mr. Flower was a supervisor in the claimant's area and was an individual who had authority to excuse absences. The claimant could have reasonably believed that she had been given time off for her surgery and that she would not need to report in on a daily basis since she could not talk after the surgery and daily reporting had not been required in the past.

What appears to have occurred in this case is a series of miscommunications between the claimant and the employer. The employer required the claimant to request a leave of absence and have a doctor's note to support her time off work. The claimant was not told this and was going by past practice where absences of several days due to illness did not require daily calls to report absences. Under these circumstances, the administrative law judge concludes that the claimant did not quit her job by failing to report to work for three consecutive workdays without notifying the employer. She was under the reasonable impression that her absence had been excused by Steve Flower. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated August 5, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css