

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CINDY J STEWART
Claimant

APPEAL NO. 11A-UI-12637-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYER'S SERVICE BUREAU INC
Employer

OC: 08/28/11
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Cindy Stewart filed a timely appeal from the September 19, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 18, 2011. Ms. Stewart participated. Joe Rausenberger, superintendent, represented the employer. Exhibits One, Two, and Three were received into evidence.

ISSUE:

Whether Ms. Stewart 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: The employer contracts to provide laborers for Nestle Purina. The employer expects some employee are going to be absent for one reason or another and regularly schedules more workers than needed for a shift in order to ensure that it is able to fulfill its contractual obligation to Nestle. Those workers who are not needed are sent home for the day. Cindy Stewart was employed by Employer's Service Bureau as a full-time laborer at the Nestle Purina facility in Clinton. Ms. Stewart started the employment in September 2010 and last performed work for the employer on April 8, 2011. Ms. Stewart was then absent from work without notifying the employer April 12, 13, and 14, 2011. The employer's attendance policy required that Ms. Stewart notify the employer shortly before or shortly after the scheduled start of her shift if she needed to be absent. If for some reason Ms. Stewart was unable to reach her supervisor at the Nestle facility, she could contact the employer at its separate Clinton office. The employer had a written policy that three days of absence without notifying the employer would be deemed a voluntary quit. At some point, Ms. Stewart had a casual conversation with a supervisor, who indicated that Ms. Stewart had separated from 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.

When an employee is absent from work for three days without notifying the employer in violation of the employer's policy, the employee is presumed to have voluntarily quit without good cause attributable to the employer. See 871 IAC 24.25(4). The weight of the evidence establishes that Ms. Stewart was indeed absent without notifying the employer for three shifts. The weight of the evidence indicates that Ms. Stewart did not make meaningful contact with the employer during her absences, though she had the means to do that. The weight of the evidence indicates that casual conversation with the supervisor most likely occurred after Ms. Stewart had separated from the employment by being absent without notifying the employer.

Ms. Stewart voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Stewart 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. Stewart.

DECISION:

The Agency representative's September 19, 2011, reference 01, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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