

**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**

**CASSAUNDR A C JOHNSON
5521 AURORA AVE APT 14
DES MOINES IA 50310**

**JANSSEN PHARMACEUTICAL INC
c/o JOHNSON & JOHNSON SERVICES
PO BOX 16500
NEW BRUNSWICK NJ 08906-6500**

**Appeal Number: 04A-UI-03045-DWT
OC 02/15/04 R 02
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 are 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 Quit

STATEMENT OF THE CASE:

Cassandra C. Johnson (claimant) appealed a representative's March 8, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Janssen Pharmaceutical, Inc. (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 8, 2004. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's witness/representative could be contacted to participate at the hearing. As a result, no one represented the employer. During the hearing, Claimant's Exhibits A and B were offered and admitted as evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in October 2002. The claimant was in training for several months. In January 2003, the claimant started working as a full-time pharmaceutical sales person. Kevin Kleemeier was the claimant's supervisor.

On January 9, 2004, Kleemeier gave the claimant a written counseling about her performance deficiencies he had observed since January 2003. Kleemeier concluded the claimant's work was not satisfactory and placed her on a 60-day probation. The written counseling listed the claimant's deficiencies and goals or objectives she needed to perform satisfactorily. The written warning indicated this was the first step in the employer's corrective action process and the claimant was not on a formal warning, which would be the next step if the claimant's performance did not improve.

After the claimant received the warning and knew she was on probation, the claimant concluded the employer would not help her succeed and would discharge her regardless of what she did to improve her performance. In early February, the claimant informed the employer her last day of work would be February 13, 2004. The claimant worked until February 13, 2004. The day the claimant resigned, she received an offer of work from another employer but she declined that offer of work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The claimant voluntarily submitted her resignation in early February 2004. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant voluntarily quits without good cause when she leaves after being reprimanded or because she believes her job performance does not meet the employer's expectations even though the employer did not ask the claimant to leave. 871 IAC 24.25(28) and (33).

The claimant established compelling personal reasons for quitting. She was naturally upset when the employer waited to tell her about any performance problems in January 2004 that had been observed more than six months earlier. When the employer placed her on a six-month probation, the employer reprimanded her for unsatisfactory job performance. After the claimant received the January 9 probation, it was logical for her to consider her options and even to start looking for another job. She had a right to do so. The claimant's belief that it was a foregone conclusion the employer would discharge her is not supported by the evidence. Claimant's Exhibit A specifically indicated the claimant was not on a final warning. Instead, the document told her what she needed to do to improve her performance and that her attitude toward improving would be taken into consideration. Since the claimant did not tell the employer why

she was resigning, it is interesting that on the same day the claimant submitted her resignation she received an offer from another employer. If the claimant had quit because she accepted other employment, she could be qualified to receive benefits. Iowa Code §96.5-1-a. Since the claimant declined the offer of employment, this is not a factor that should be considered.

The facts establish that when the claimant quit she was on probation, but the employer had not made a decision to discharge the claimant. When the claimant submitted her resignation, she had personal reasons for resigning. The claimant's reasons for quitting, however, do not qualify her to receive unemployment insurance benefits. Therefore, as of February 15, 2004, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 8, 2004 decision (reference 01) is affirmed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of February 15, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/kjf