

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICIA J GRAVERT**  
Claimant

**APPEAL NO. 10A-UI-10600-VS**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**C EWERT PLUMBING & HEATING INC**  
Employer

**OC: 06/06/10  
Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct  
Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated July 23, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 22, 2010, in Davenport, Iowa. Claimant participated. Chris Matthys and Patrick Devine were witnesses for the claimant. Employer participated by Charles Ewert, president, and Ellen Conklin, secretary. The record consists of the testimony of Patricia Gravert; the testimony of Chris Matthys; the testimony of Patrick Devine; the testimony of Charles Ewert; and the testimony of Ellen Conklin.

**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 plumbing and heating contractor. The claimant was hired on November 10, 2009, to perform secretarial duties. She also did dispatching and answered phones. She was a full time employee. She worked from Monday through Thursday from 7:00 a.m. to 5:00 p.m. Her last day of work was June 9, 2010.

On June 9, 2010, the claimant had a stressful day. On or about 4:40 p.m., Charles Ewert told the claimant that she was not working out for the company and he needed to let her go. The claimant's fiancé, Chris Matthys, had come into the office and heard this part of the conversation. Mr. Ewert told Mr. Matthys to leave. Mr. Matthys made a comment to the effect that he thought things had been working out. Mr. Ewert again told Mr. Matthys to get out of his building.

#### **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.

The first issue in this case is the nature of the separation of employment. The claimant testified that she did not quit her job and that she would have never quit her job until she had another job lined up. Mr. Ewert was equally adamant that he did not terminate the claimant. He testified that the claimant quit her job, saying that she would make it "easy" for him. It is impossible to reconcile the testimony of these individuals. The only other person present was Mr. Matthys. He overheard Mr. Ewert tell the claimant that she was not working out and that he had to let her go. Both Mr. Ewert and Mr. Matthys agreed that Mr. Ewert told Mr. Matthys twice to leave. Whether Mr. Ewert used profanity when he told Mr. Matthys to leave is disputed.

After carefully evaluating the testimony and assessing the credibility of the witnesses, the administrative law judge concludes that the claimant did not quit her job voluntarily. She reasonably assumed that Mr. Ewert terminated her. The claimant appears to have been intimidated by Mr. Ewert and by the job itself. The claimant, however, was credible when she testified that she would never quit her job until she had another job.

Since the claimant did not voluntarily quit her job and there is no evidence of misconduct, benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated July 23, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs