

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELIZABETH A STOFFER
Claimant

APPEAL NO. 08A-UI-05483-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

OC: 05/04/08 R: 02
Claimant: Appellant (5)

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

STATEMENT OF THE CASE:

Elizabeth A. Stoffer (claimant) appealed a representative's June 2, 2008 decision (reference 02) that concluded she was not 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 June 25, 2008. The claimant participated in the hearing. Connie Pletcher appeared on the employer's behalf. 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 employer is a temporary employment firm with a single dedicated business client in Clarion, Iowa. The claimant began an assignment with the business client through the employer on June 18 2007. She worked full time as a material handler. Her last day on the assignment was May 2, 2008.

On May 3 the claimant called in and left a message that she would be absent, as her child was in the hospital with pneumonia. She again called in and left that message on May 6 and May 7. On May 8 and May 9 the claimant was a no-call, no-show; she assumed the employer understood she would be out the remainder of the week due to the illness of her child. On May 8 the employer called and left a message for the claimant indicating that there would be a need to discuss her attendance, and on May 9 the employer called again to indicate there was a concern that needed to be addressed regarding the claimant's attendance and to inform the claimant that she needed to call and talk with the employer as there would be a change in the work schedule starting May 12.

The claimant did not respond to or return the employer's calls, as she believed she was going to be discharged due to her attendance.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action that directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action that directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). 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. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that her separation was not “voluntary” as she had not desired to end the employment; she argues that it was the employer’s action indicating there was an attendance issue that would need to be addressed that led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). 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. The rule further provides that there are some actions by an employee that are construed as being voluntary quit of the employment, such as where an employee fails to return to perform available work because of a belief she has been or will be discharged but the employer has not in fact told the employee that she has been discharged. 871 IAC 24.25.

The claimant failed to return to work or contact the employer to determine her employment status and she had not been told she was discharged; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). Quitting because a reprimand has been or is going to be given is not good cause. 871 IAC 24.25(28). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer’s work environment detrimental or intolerable. O’Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative’s June 2, 2008 decision (reference 02) is modified with no effect on the parties. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw