

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUDY A WINKEL
Claimant

QWEST CORPORATION
Employer

APPEAL 15A-UI-06306-EC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/10/15
Claimant: Appellant (1)

Iowa Code §96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the May 27, 2015, (reference 01) unemployment insurance decision that denied benefits based upon a voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on June 29, 2015. The claimant, Judy Winkel, participated, along with her attorney Dennis McElwain. The employer, Qwest Corporation, participated through Jaclyn Fischler, employer representative; Joshua Sorenson, sales and services supervisor, the claimant's immediate supervisor; and Steve Hugunin, resource allocation specialist, handling scheduling.

ISSUE:

Was the separation from employment a voluntary quit with or without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a direct marketing agent in the Sioux City, Iowa telephone call center from December 13, 2010, until this employment ended on May 7, 2015, when she told her employer that she was retiring, effective that morning. Her job was not in jeopardy at that time. Work remained available to her after she resigned from this employment.

The claimant left this employment shortly after she returned to work after a seven week medical leave. The claimant was on an approved FMLA leave of absence. When she returned to work on May 4, 2015, she was assigned to a different queue as a sales and service associate. Her regular hourly pay remained the same as it had been before her leave of absence.

Her opportunities for increased compensation through bonuses decreased because she was assigned to a less lucrative queue. Before her leave of absence, she earned \$1000 per month in bonuses, earned by selling extra products. After she returned from her leave of absence on May 4, 2015, she expected to earn only \$300 per month in bonuses. Her supervisor stated that the monthly bonus varies quite a bit, and that there is no average bonus.

The claimant's supervisor explained the process used to select the employees who work in the preferred queue. This process relies on production for a certain period of time. The claimant was not working during the most recent and relevant time period. She could have worked her way back to the more lucrative queue. Instead, she left her employment a few days after her leave of absence ended.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(13) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The evidence presented established that the claimant demonstrated her intention to leave her employment and carried out that intention.

The claimant's decision to quit because she did not agree with her reassignment to a less lucrative queue following her seven week leave of absence was not for a good cause reason attributable to the employer. Her regular hourly wage remained the same. She was expected to earn her way back to the more lucrative queue, in accordance with the employer's usual process. While her decision to leave her employment may have been based upon her own good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The May 27, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Emily Gould Chafa
Administrative Law Judge

Decision Dated and Mailed

ec/pjs