

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEANA MITCHELL
Claimant

APPEAL NO: 10A-UI-08311-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 05/09/10
Claimant: Appellant (1)

Iowa Code § 96.5-1 - Voluntary Quit
871 IAC 24.25(4) - Voluntary Quit Without Good Cause

STATEMENT OF THE CASE:

Leana Mitchell (claimant) appealed an unemployment insurance decision dated June 1, 2010, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Care Initiatives (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 28, 2010. The claimant participated in the hearing. The employer participated through LuAnn Modlin, Administrator; Ruth Vangelder, Director of Nursing; Patrick Anucik, Third Shift Supervisor; and Employer Representative Lynn Corbeil. Employer's Exhibits One through Five were admitted into evidence. 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:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time certified nurse's assistant from December 26, 2006 through April 19, 2010. The police took her from the work site on April 19, 2010 for questioning and subsequently arrested her for a work-related incident. The employer's attendance policy provides an employee is considered a voluntary quit if she is a no-call/no-show for two consecutive workdays. The claimant was a no-call/no-show for three days ending on April 23, 2010 and was considered to have voluntarily quit her employment.

The employer sent the claimant a letter dated May 3, 2010 advising her that she was considered to have abandoned her job after she was a no-call/no-show for three scheduled shifts. The claimant was told by a co-worker on April 20, 2010 that she was not allowed on the property after that. The claimant did not return to work or call the employer to ask about it because she was embarrassed.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

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. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by failing to call or return to work after April 19, 2010.

871 IAC 24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was deemed a voluntary quit on April 23, 2010 after three days of no-call/no-show. It is her burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not met that burden and has not shown that her separation was with good cause attributable to the employer. Benefits are therefore denied.

DECISION:

The unemployment insurance decision dated June 1, 2010, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs