

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REGINA M GRIMES

Claimant

APPEAL NO. 06A-UI-09837-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION

Employer

**OC: 09/03/06 R: 03
Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Regina Grimes filed a timely appeal from the September 26, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 23, 2006. Ms. Grimes participates. Marcie Schneider of TALX UC eXpress represented the employer and presented testimony through Diana Boyd. Employer's Exhibits One through Four and Claimant's Exhibits B and F were received into evidence.

ISSUE:

Whether Ms. Grimes voluntarily quit for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Regina Grimes was employed by Qwest as a full-time national directory agent from June 1976 until September 1, 2006 when she voluntarily quit. Ms. Grimes' duties involved looking up numbers for customers. The employer evaluated Ms. Grimes based on her accuracy, her speed, her demeanor towards customers, and the percentage of work time during which Ms. Grimes was actively engaged in assisting customers. At the beginning of August, Ms. Grimes announced her intention to retire at the beginning of September. Ms. Grimes notified her immediate supervisor, Customer Assistance Supervisor Diana Boyd, that she had requested pension application materials from the employer. From June 9 to July 31, 2006, Ms. Grimes had been on a medical leave of absence that was based on diagnoses for depression and anxiety. Prior to Ms. Grimes commencing the leave of absence, the employer had placed Ms. Grimes on a "Warning of Dismissal" based on performance concerns. The Warning of Dismissal was actually a performance improvement plan that the employer reviewed with Ms. Grimes monthly. When Ms. Grimes returned from her leave of absence, Ms. Boyd advised Ms. Grimes that the employer would be extending the "Warning of Dismissal" to the end of August. It was at this time that Ms. Grimes gave notice of her resignation. On August 29, Ms. Boyd reviewed the plan of dismissal and determined that Ms. Grimes would not be eligible for rehire if she separated from the employment. However, the employer at no time told Ms. Grimes that she was discharged from the employment or that she would face imminent discharge if she did not resign. Ms. Grimes was concerned that she would eventually be discharged from the

employment if she did not resign and did not wish to lose her retirement benefits by eventually being discharged from the employment. At the time Ms. Grimes submitted her resignation and at the time Ms. Grimes separated from the employment continued work was available for her.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Grimes' voluntary quit was for good cause attributable to the employer. It does not.

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.

871 IAC 24.25(24), (28) 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 section 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 section 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:

(24) The claimant left employment to accept retirement when such claimant could have continued working.

(28) The claimant left after being reprimanded.

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).

The evidence in the record indicates that Ms. Grimes resigned because she believed her employment was not to the satisfaction of the employer, but the employer had not requested that she leave and continued work was available. The evidence indicates that Ms. Grimes quit in response to a pending reprimand. The evidence indicates that Ms. Grimes quit to accept retirement when she could have continued working. Quits under these circumstances are presumed to be without good cause attributable to the employer. See 871 IAC 24.25(33) and (28).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Grimes voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Grimes is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Grimes.

DECISION:

The Agency representative's September 26, 2006, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in a been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs