

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KALISHIA S RUSSELL
Claimant

APPEAL NO. 09A-UI-06196-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS ROBUCK & CO
Employer

OC: 03/22/09
Claimant: Appellant (4-R)

Iowa Code Section 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

Kalishia Russell appealed from an unemployment insurance decision dated April 7, 2009, reference 01, that denied benefits. After due notice was issued, a hearing was held on May 18, 2009. Ms. Russell participated. Fred Hoffman, Sales and Service Manager, represented the employer. Exhibits One and Two were received into evidence.

ISSUE:

Whether Ms. Russell's voluntary quit was for good cause attributable to the employer. It was not.

Whether Ms. Russell's voluntary quit disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kalishia Russell was employed by Sears as a customer service representative from June 2, 2008 until March 17, 2009, when she voluntarily quit due to a lack of child care. Ms. Russell had worked 30 hours or more per week until January 22, 2009, at which time she voluntarily reduced her hours to 25.5 hours per week.

Ms. Russell was a full-time student during the employment. In January 2009, Ms. Russell began an externship in connection with her studies. Ms. Russell requested a change in her work hours and the employer accommodated the request.

Toward the end of the employment, Ms. Russell no longer had assistance in transporting her children where they needed to go during the day. Ms. Russell desired afternoon work hours, but did not submit a formal request so that the employer could consider a request.

On March 17, 2009, Ms. Russell left a message on her supervisor's voice mail that she could not handle school and work and was leaving the employment. The quit was effective immediately. The employer continued to have work available for Ms. Russell.

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.

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.

Where a person voluntarily quits employment due to a lack of child care or to attend school the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(17) and (26).

The evidence indicates that Ms. Russell voluntarily quit due to lack of child care and due to her desire to focus on her studies. The voluntary quit was without good cause attributable to the employer. The employer will not be charged for benefits paid to Ms. Russell. Ms. Russell is disqualified for benefits based on base period wage credits earned from this employment 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. Ms. Russell is otherwise eligible for benefits, provided she meets all other eligibility requirements.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

This matter will be remanded to the Claims Division for redetermination of Ms. Russell's eligibility for reduced benefits based on base period wage credits from employment other than Sears.

DECISION:

The Agency representative's April 7, 2009, reference 01, decision is modified as follows. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits based on base period wage credits earned from this employment 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 claimant is otherwise eligible for benefits, provided she meets all other eligibility requirements.

This matter is remanded to the Claims Division for redetermination of the claimant's eligibility for reduced benefits based on base period wage credits from employment other than Sears.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs