

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LYNDSEY M BREKUNITCH**  
Claimant

**APPEAL NO. 11A-UI-03825-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE BUCKLE INC**  
Employer

**OC: 02/13/11  
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated March 17, 2011, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 15, 2011. The claimant participated. The employer participated by Sadie Perry, area manager. Natalie Job was a witness for the employer. The record consists of the testimony of Lyndsey Brekunitch; the testimony of Sadie Perry; and the testimony of Natalie Job.

**ISSUE:**

Whether the claimant voluntarily left for good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is in the retail clothing business. The claimant worked as a sales lead at the employer's store in the Jordan Creek Mall in West Des Moines, Iowa. The claimant was hired in October 2009. Her last day of work was February 16, 2011. The claimant was scheduled to work on February 19, 2011, and February 20, 2011, and did not come to work.

The events leading up to the claimant's separation of employment date back to January 23, 2011. During inventory, the claimant felt that Sadie Perry, the area manager, had acted inappropriately. The claimant decided to file a complaint with the home office concerning Ms. Perry. On February 16, 2010, the claimant was working and Ms. Perry was away at management meetings. Ms. Perry received several messages from co-employees who were having difficulty with the claimant. Ms. Perry called the store and asked to speak to the claimant. The claimant refused to talk to Ms. Perry. Her reason was that she did not want to discuss her complaint to the home office with Ms. Perry and she thought that Ms. Perry was calling about that complaint.

Natalie Job, who was on the phone with Ms. Perry, and in the store with the claimant, served as a go-between with Ms. Perry and the claimant. Ms. Perry told Ms. Job to tell the claimant that if she did not want to speak on the phone, the claimant should clock out and meet with Ms. Perry personally. The claimant agreed to a meeting on February 19, 2011, but never showed up. She did not come to work on February 20, 2011. She has not contacted the employer.

The claimant believes that she was terminated by the employer.

#### **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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The issue that must be determined in this case is which party initiated the separation of employment. The claimant denied that she quit and insisted she was terminated. Ms. Perry testified that she did not terminate the claimant. Ms. Job, who was acting as a go-between on the phone, confirmed Ms. Perry's testimony. The claimant was instructed to go home but only because she refused to speak with Ms. Perry.

The most telling piece of evidence was Ms. Perry's testimony that the claimant agreed to meet with her on February 19, 2011. The claimant never showed up for the meeting. She was scheduled for work on February 19, 2011, and February 20, 2011. The most reasonable inference from the evidence is that while Ms. Perry needed to talk to the claimant about some issues concerning her performance and conduct, the claimant was not terminated. Ms. Perry said that she hoped to work things out with the claimant. Ms. Job confirmed that nothing was said about the claimant being terminated. It does not make sense that an employer would terminate a claimant and then schedule a meeting and put the claimant on the work schedule.

The administrative law judge concludes that it was the claimant, not the employer, who initiated the separation of employment. She clearly had issues with Ms. Perry and her desire to work for the employer was waning. The claimant did not offer sufficient evidence to establish that the workplace was so hostile and detrimental to her that good cause could be attributed to the employer. Since the claimant voluntarily quit without good cause attributable to the employer, benefits are denied.

**DECISION:**

The representative's decision dated March 17, 2011, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until 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.

---

Vicki L. Seeck  
Administrative Law Judge

---

Decision Dated and Mailed

vls/kjw