**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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| **TRACY L FREUDENBERGER**<br>Claimant<br><br>**MEDIACOM COMMUNICATIONS**<br>Employer | **APPEAL 15A-UI-04663-KCT**<br><br>**ADMINISTRATIVE LAW JUDGE DECISION**<br><br>**OC: 04/05/15**<br>**Claimant: Appellant (1)** |

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 16, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on May 26, 2015. The claimant participated. The employer did not participate.

**ISSUES:**

Did the claimant voluntarily quit the employment with good cause attributable to employer?

Was she discharged for work-related, disqualifying misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time beginning March 18, 2012 as a customer service representative and was separated from employment on March 24, 2015, when the claimant quit.

On the evening of March 9, 2015, the claimant told her supervisor Amy Catron that she needed medical treatment after falling off a ladder at home and would not be at work the following day. The claimant was treated at a hospital on March 10, 2015 and called her supervisor again to report her status. She had fractured ribs. The claimant worked on March 11, 2015 and provided medical documentation of her diagnosis and treatment. The claimant had no work restrictions because she had a sedentary job. On March 12, 2015, she told her supervisor she did not have enough time accrued to cover the missed day. The claimant was told that because it was a documented medical emergency, under the company policy, there would be no discipline.

On March 17, 2015, she received a corrective action document from Riechardt that her absence on March 12, 2015 was unexcused due to lack of available flex-time and future progressive discipline was possible if she had additional attendance violations. She had no previous attendance issues. The claimant asked Catron why she received the document because she thought it was inconsistent with written company policy. Catron agreed. She did not sign the

disciplinary document because she wanted an explanation. The claimant asked for clarification about medical emergency absences from Riechardt who advised that the company had a lenient attendance policy. She continued to work as scheduled.

On March 23, 2015, Catron coached the claimant about her refusal to sign the disciplinary notice from March 17, 2015. She did not provide written comments on the disciplinary notice. She understood that the initial discipline would not lead to further discipline without additional issues. The claimant indicated she thought the warning was inconsistent with written company policy. Human resources personnel Brook Mallory and Catron told her that it would still go in her file. The claimant wanted to avoid negative reviews because she desired a promotion. She continued to ask various supervisors about the employer's medical emergency policy.

On the same date, Riechardt e-mailed the claimant and told her that she could look for other work if she did not like the situation. In response, the claimant sent her notice of resignation to Catron giving two-weeks' notice. Catron and Mallory advised her that she could rescind her resignation which she did in an e-mail to Mallory, Catron and Riechardt on the same day. On March 23, 2015, Riechardt informed her that he did not accept her rescinded resignation and her last day of employment would be March 31, 2015.

On March 24, 2015, the claimant went to work for three hours, and then quit because she thought she would not get paid for her commission during her last week. Salespeople were not paid commission until the work is completed, which usually took at least one week. In addition, without commission her transportation costs would have made the employment unprofitable for her. The following day, she sent Riechardt an e-mail from her home and received no response. She contacted her former supervisor on March 31, 2015, to see if Riechardt was available and was told he was no longer employed there.

**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(22), (28) and (30) provide:

> 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:
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> (22) The claimant left because of a personality conflict with the supervisor.

(28) The claimant left after being reprimanded.

(30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance 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).

"Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). The claimant initially resigned because she disliked what Riechardt said to her. Her job was not in jeopardy from a single disciplinary action, even if she questioned the accuracy of the written warning. She quit after receiving a termination notice that would end her employment on a date before she originally planned to do through her resignation.

The claimant's properly reported medically-related absence in March 2015 is not job misconduct. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

However, the claimant's responses to receiving a written warning regarding the medically-related absence are disqualifying. She resigned and then rescinded her resignation on the same day. The employer was not required to accept her rescission. When the employer informed her that her employment would end, she quit for personal reasons before the date the employer had identified.

In addition, the claimant did not sign a disciplinary document because she thought it was inaccurate. While she was concerned that any disciplinary action could interfere with her goal of promotion, the way in which she addressed her concerns was not attributable to the employer. Refusal to sign a disciplinary document can be misconduct. Failure to sign a written reprimand acknowledging receipt constitutes job misconduct as a matter of law. *Green v. Iowa Dep't of Job Serv.*, 299 N.W.2d 651 (Iowa 1980).

Even though the employer did not accept her rescinded resignation and instead terminated her employment before the end of the two-week notice period she had given, the claimant chose to quit on or about the day she received notice. The claimant had the final act in this matter. Her response is not attributable to the employer. Her decision to quit because she did not agree with the manager was not for a good cause reason attributable to the employer. Benefits are denied.

**DECISION:**

The April 16, 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.

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Kristin A. Collinson
Administrative Law Judge

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Decision Dated and Mailed

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