

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA M BOOK
Claimant

APPEAL NO. 11A-UI-01170-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS ROEBUCK & CO
Employer

**OC: 11/07/10
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 21, 2011 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on March 1, 2011. Claimant participated. Employer participated through Human Resources Associate Bridget Clark and Team Leader Alexander Hallums.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer or if she was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as an online care consultant and was separated from employment on November 10, 2010. Her last day of work was November 10 after she had been medically released to return to work. Towards the end of the day, she went to Hallums she said she wanted to go to part-time because of the holiday and “family was more important.” He said he would pass along the request. On November 11 Hallums was not at work and claimant spoke to Human Resources Manager Nicole Ehlers and requested a non-specific leave of absence through December 2 and indicated she would resign if it were not granted. Ehlers took it as a personal rather than medical leave request and said she would submit the request to management. On Saturday, November 13 Hallums, passing along the message from human resources, told claimant that her personal leave was denied and her resignation was accepted. She responded, “I appreciate your call” but did not dispute the outcome. She did not pursue the issue with human resources or management or with her physician.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged but voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

871 IAC 24.25(37) 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment but was not told so by the employer and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. Since claimant did not dispute Hallums' message from management and human resources that her leave request was denied and that her resignation was accepted, her failure to continue reporting to work or pursue the issue with management, human resources, or her physician was an abandonment of her job. Benefits are denied.

DECISION:

The January 21, 2011 (reference 01) 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw