

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMANDA SIMMONS**  
Claimant

**APPEAL NO. 11A-UI-11878-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QWEST CORPORATION**  
Employer

**OC: 08/14/11  
Claimant: Appellant (1)**

Iowa Code § 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Amanda Simmons (claimant) appealed an unemployment insurance decision dated September 6, 2011, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Qwest Corporation (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing began on October 4, 2011 and was completed on October 25, 2011. The claimant participated in the hearing with her mother, Charlotte Simmons. The employer participated through Sheree Hanlon, supervisor network operations; Ramona Mitchell, account coordinator for the Reed Group; Steve Zacs, employer representative. Employer's Exhibits One and Two and Claimant's Exhibit A were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time customer communications technician from July 25, 1993 through July 18, 2011. Her job involved assisting customers in isolating trouble and getting circuits repaired. She typically worked the hours from 10:00 a.m. to 6:30 p.m. from Mondays through Fridays, but occasionally worked weekends. The claimant's last day of work was May 23, 2011. She had "severe chronic back pain" and "reoccurring neck pain," so she called in her absence due to illness beginning May 24, 2011. The claimant continued calling in her absences and made an appointment with her physician on May 27, 2011, but could not get into the doctor until June 13, 2011.

The employer's resource allocation person opened up a short-term disability case on June 1, 2011, which is standard procedure after an employee is absent four days or longer. The employer has a third-party provider handling disability requests. The third-party provider is Century Link Disability Services (CLDS), formerly known as Qwest Disability Services. The claimant was advised she had to provide medical documentation. An employee from CLDS contacted the claimant's supervisor, Sheree Hanlon, on June 9, 2011 requesting an alternate phone number for the claimant, as he was unable to contact her. Ms. Hanlon sent the claimant a phone text relaying the message and the claimant returned the call to Ms. Hanlon, so she was aware CLDS was trying to contact her.

The claimant saw her physician on June 13, 2011 and received a backdated excuse taking her off work from May 24, 2011 through June 13, 2011. The claimant believed her physician had faxed documents to CLDS but, in fact, none were sent and CLDS denied the claimant's short-term disability on June 14, 2011. It attempted to contact the claimant by telephone but could not reach her so sent a letter on that same date.

The claimant had a prescheduled vacation from June 14, 2011 through July 3, 2011, when she went to Bosnia to meet her boyfriend's parents and family. She was scheduled to return to work on July 5, 2011 but failed to call or report to work for three consecutive days ending July 7, 2011. The employer called her at the home number and a cell number but could not leave a message, as the claimant's mailbox was full.

The claimant appealed the denial of her short-term disability on July 12, 2011. Medical documents were faxed to CLDS regarding the claimant's appeal and the medical information was reviewed by an orthopedic surgeon.

The employer sent the claimant a certified return to work letter dated July 13, 2011 advising the claimant that she needed to return to work by July 18, 2011. The letter confirmed the claimant's short-term disability benefits were denied from May 24, 2011 forward and that her entire absence was denied under FMLA. The claimant was advised she needed to return to work by 10:00 a.m. on Monday, July 18, 2011 or she would be terminated for failure to report to work. The claimant did not return to work but called the employer on July 18, 2011 stating that she had developed a facial tick and needed to go to the doctor. The employer sent the claimant a certified termination letter on July 18, 2011 confirming that her employment had been terminated due to job abandonment.

The additional, following facts were not dispositive regarding the claimant's separation from employment. They are being included simply as part of the record. The claimant's denial of short-term disability was upheld on August 16, 2011 and she was notified of this result. The reviewing orthopedic surgeon noted the claimant's medical records indicate she complained of subjective neck pain and a reduced range of motion. She can appeal this decision by filing a civil suit.

The claimant and her mother testified at length about the claimant's personal, emotional and medical issues. Essentially, the claimant began taking a prescription for Chantix on approximately May 20, 2011. She testified that she was given the prescription in December 2010 by her "pain doctor" but decided to take it because her boyfriend wanted her to quit smoking. The claimant believed the Chantix "messed me up big time." Her mother testified the claimant was "retreating inward and sleeping excessively." Her mother's prepared statement also indicates that the claimant's "boyfriend had been noticing a severe change in personality and a depressed, anxious state and recommended that she quit taking the CHANTIX (sic)." The claimant stopped taking the Chantix but did not advise her doctor on

June 13, 2011 that she had taken it, nor did she advise her doctor that she had problems with the medication. However, she was feeling better by the time she went to the doctor and only went to get a doctor's approval to return to work. The claimant told her doctor she was feeling better and was scheduled for a three-week vacation the following day and the doctor said the vacation could only help the situation.

The claimant reported no medical issues while on vacation, but on July 3, 2011, when she was flying home, she decided to take more Chantix. Her mother reported for the claimant in Claimant's Exhibit A, "While waiting to board plane, took 2 CHANTIX (sic) pill, hoping to be smoke free by the time the boyfriend returned." The claimant went to sleep when she got home and after she woke up on July 4, 2011, she "took two more CHANTIX (sic) pills." Again the claimant's mother wrote in a statement that the claimant had, "No recall from this period until mother arrived on July 10th." The claimant had apparently not spoken to her mother from July 4, 2011 up until July 10, 2011, when her mother arrived at the claimant's home. Her mother testified that she, "found her daughter on the couch dehydrated and suicidal" and her written statement indicates she arrived to find the claimant, "unbathed, dehydrated and deeply depressed." The claimant did not go and/or was not taken to a doctor until July 18, 2011, when she was scheduled to return to work. She testified at the hearing that she never talked to a doctor about taking the Chantix.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by failing to call or report to work for three consecutive days ending July 7, 2011. She further showed that she intended to quit when she failed to return to work by 10:00 a.m. on July 18, 2011, after she received the return to work letter dated July 13, 2011.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

However, it should be noted that the outcome of this case would have been the same if the administrative law judge had concluded that the employer discharged the claimant. Her excessive unexcused absences constituted misconduct and would have disqualified her from receiving benefits. See Iowa Code § 96.5(2)(a) and 871 IAC 24.32(7).

**DECISION:**

The unemployment insurance decision dated September 6, 2011, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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