

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE O BAUTISTA
Claimant

APPEAL NO. 10A-UI-08287-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REGIS CORP
Employer

**OC: 04/18/10
Claimant: Appellant (1)**

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, Michelle Bautista, filed an appeal from a decision dated June 8, 2010, reference 03. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 27, 2010. The claimant participated on her own behalf and with witness Mishana Dornejo. The employer, Regis, participated by Manager Shawna Monaghan and was represented by Barnett Associates in the person of Steve Zaks.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Michelle Bautista was employed by Regis from December 21, 2009 until April 19, 2010 as a part-time stylist. On Friday, April 16, 2010, the claimant was scheduled to work 2:00 p.m. until 9:00 a.m. Early that morning she texted Manager Shawna Monaghan to say she would be in at 3:30 p.m. because she had to pick up her daughter at daycare. The claimant and her older daughter are the only two people authorized to pick up the child even though she has a husband and two sons.

Ms. Monaghan texted the claimant back to say she needed her to call the supervisor, Mindy, or the manager on duty if she was not able to come in or would be late. At 3:30 p.m. Ms. Monaghan left a voice mail message asking the claimant if she was coming in because Mindy left at 2:00 p.m. and there was no one else to close. If she was not coming in a replacement would have to be found. The claimant did not respond.

Ms. Bautista was no-call/no-show for work on April 16, 17 and 18, 2010. On April 18, 2010, Ms. Monaghan left her another voice mail to say if she did not intend to come back to work to drop off her key. The claimant's daughter dropped off the key on April 19, 2010.

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.

871 IAC 24.25(4) 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 section 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 section 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was scheduled to work for three days and did not come to work or call in. There is no evidence the employer fired her. The employer needed to know for certain if she was coming in when she called at 3:30 p.m. on April 16, 2010, when the claimant was already 90 minutes late to work. Ms. Bautista did not come to work that day or return the manager's call. The claimant's failure to come in appears to be the result of lack of childcare and transportation. Her failure to come in the other two days was not explained except that she thought she was fired. Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without good cause attributable to the employer. *LaGrange v. IDJS*, (Unpublished, Iowa App. 1984). The administrative law judge finds the reasoning in that case to be persuasive. The claimant quit for being no-call/no-show to work for three days. She is disqualified.

DECISION:

The representative's decision of June 8, 2010, reference 03, is affirmed. Michelle Bautista is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css