

stating employees could not take vacation the week of July 4, 2005, because it needed everyone for inventory. Despite the memo, the claimant asked for vacation July 7 and 8, 2005, and the employer denied her request and reminded her that no one was being granted vacation during that time because of inventory. On Thursday, July 7, 2005, the claimant called in sick. On Friday, July 8, 2005, she called in and left a voice mail but did not speak to anyone in person as required by the employer's policy. Manager Gail Fisher tried to call the claimant around 7:50 a.m. but could not reach her and decided she would speak to her about the situation Monday, July 11, 2005. Ms. Fisher did not have the authority to discharge employees but planned to talk to President Rose Lind about whether to continue the claimant's employment because of her attendance and job performance problems. On July 9, 2005, the claimant called Ms. Fisher at home and asked about getting her check and Ms. Fisher told her she needed to call Ms. Lind. On July 11, 2005, the claimant did not call or report for work. Human Resources Manager Doris McBurney called the claimant and left a message on her cell phone around 9:30 a.m. The claimant called back around 10:15 a.m. and spoke to Ms. Fisher. She apologized and said she could not continue working there because of her personal problems. Ms. Fisher told her to call Ms. Lind, and when she called Ms. Lind the claimant stated that she did not think she has a job there anymore. She then said she thought she would be able to handle her job and the other problems she was experiencing in her life but "realized (she) just couldn't do it." She apologized to Ms. Lind and said she was sorry but she "just couldn't do it" anymore, and the employer concluded the claimant voluntarily quit her job. The employer had decided it was going to terminate the claimant's employment but she quit before it could tell her.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's separation from employment qualifies her to receive unemployment insurance benefits. The claimant is not eligible to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a. While the employer had made the decision to terminate the claimant's employment because of attendance and performance issues, the claimant quit prior to being notified by the employer of its intention to discharge her. Although the claimant maintains that Ms. Fisher told her that her employment was terminated July 9, 2005, Ms. Fisher credibly testified she has never discharged an employee and does not have the authority to do so because that function is solely performed by Ms. Lind as President of the company. Consequently, the administrative law judge concludes the claimant was not discharged but voluntarily left her employment. Therefore, the remaining issue is whether her leaving was for good cause attributable to the employer. For the reasons that follow, the administrative law judge concludes it was not.

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.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving 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 section 96.6-2 (amended 1998). The claimant told both Ms. Fisher and Ms. Lind July 11, 2005, that she could not continue her job because of personal problems in her life that required her attention. It seems unlikely she would have that conversation with Ms. Fisher and Ms. Lind July 11, 2005, if she was told her employment was terminated July 9, 2005. Additionally, the claimant's credibility was somewhat damaged by the fact that she called in sick on the two days that week she requested, but was denied, vacation. For the above-stated reasons, the administrative law judge finds the claimant voluntarily left her job and has not demonstrated that her leaving was for good cause attributable to the employer as defined by Iowa law. Therefore, benefits are denied.

DECISION:

The August 23, 2005, reference 01, decision is affirmed. The claimant voluntarily left her 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.

je/kjw