

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOY L LANGE
Claimant

DECO PRODUCTS COMPANY LLP
Employer

APPEAL 15R-UI-07674-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/15
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 8, 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 August 10, 2015. The claimant participated personally. Although properly notified for the hearing, the employer elected not to participate.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time last as a die cast quality rover and was separated from employment on March 9, 2015. Continuing work was available.

The claimant originally was hired to work on the line, but moved into a role of a die cast quality rover in 2009, when the company reorganized. At the time of the claimant's separation, she had been approved for intermittent FMLA, to allow her time off of work to address depression associated with her husband's death the prior year. The claimant returned to work on March 9, 2015, after using some of her FMLA leave, and was informed she was being moved back to the line, for business needs. The claimant was asked to sign a transfer form, and she became upset. The claimant is unsure if her wages would have remained, but believed the move to be permanent. The claimant became upset and began crying, before determining she needed to leave and could not handle working the shift. The claimant's manager was aware of her leaving mid-shift.

The claimant proceeded to lock herself in her room for the next three days and did not call or show up to work. She did not notify the employer of her intended use of FMLA, as required. The claimant made contact with the employer one week after her final day of work, and was informed that due to three days of no call/no show, her separation had been processed. The claimant was aware the employer's policy regarding multiple days of no call/no show.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the 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(27), (32) and (4) 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:

(27) The claimant left rather than perform the assigned work as instructed.

(32) The claimant left by refusing a transfer to another location when it was known at the time of hire that it was customary for employees to transfer as required by the job.

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

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "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 Commission, 277 So.2d 827 (Fla. App. 1973).

In this case, the claimant left her shift when she learned she was moving from her rover position to the line. An employer has the right to allocate personnel in accordance with the needs and available resources. Brandi v IDJS, (Unpublished Iowa App. 1986). Understandably, the claimant was surprised by the change, but had worked in the position before, and was aware the employer had made adjustments to staff in the past, for business purposes. There was no evidence offered that the transfer was intended to punish or serve as a disciplinary response to the claimant's use of her FMLA. Nor was the claimant aware if her wages would even change, but believed she would retain the same hours. Rather than trying to work the shift or taking the matter up with human resources or upper management, the claimant elected to leave mid-shift, while still upset over the transfer.

The claimant was not separated based on her choice to leave mid-shift. The following three days, the claimant failed to return to work, or alternately call off for her shifts. The claimant did not call off because she had, in her words, "spiraled out of control", from the staffing change,

and was affected by her depression. The claimant remained at home for three days and did not have contact with the employer. The claimant was aware that in order to use her intermittent FMLA, she had to make contact with Heather, to cover the absence, but did not do so. When the claimant made contact with the employer, it was one week after she had walked off her shift, when she learned that she had been separated due to her three days of no call/no show.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The administrative law judge recognizes that the claimant was upset by the staffing change and was facing personal challenges, but it does not negate her walking off the shift and not returning or contacting the employer for the remainder of the week. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are withheld.

DECISION:

The April 8, 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.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/css