

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER L MARTINEZ
Claimant

APPEAL NO. 12A-UI-12082-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REGENCY REHAB & SKILLED NURSING
Employer

OC: 09/092/12
Claimant: Appellant (2)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, Jennifer Martinez, filed an appeal from a decision dated September 28, 2012, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 1, 2012. The claimant participated on her own behalf. The employer, Regency Rehab and Skilled Nursing (Regency), participated by Dietary Manager Mindy Watts and Administrator Roxanne Smith.

ISSUE:

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

FINDINGS OF FACT:

Jennifer Martinez was employed by Regency from September 19, 2011 until May 21, 2012 as a full-time dietary aide/cook. She had been placed on restrictions by her doctor some time before the end of her employment, the major restrictions no lifting more than five pounds. Usually Dietary Manager Brook Rader was in the kitchen to help her in the morning.

On May 19, 2012, Mr. Martinez called Ms. Rader approximately 3:00 a.m. to say she would not be in to work if no one was there to help her. Ms. Rader said she would not be in because she had “been up all night fighting with [her] boyfriend.” She indicated Ms. Martinez was still expected to be there at 6:00 a.m. and the claimant refused to do so without someone there to help her.

A flurry of text messages passed between the two of them during the small hours of the morning of May 19, 2012, with the final message from the employer being that the claimant was still expected to be there at 6:00 a.m. or she did not have a job. Ms. Martinez did not come to work.

On May 20, 2012, the claimant texted a dietary aide in the kitchen to say she would not be in. The dietary aide could not help her because Ms. Martinez was doing the job of cook that day. That evening Ms. Martinez spoke with Mindy Watts, who told her Ms. Rader intended to fire her the next day so she did not come to work.

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 employer has asserted the claimant was a voluntary quit for being no-call/no-show to work for three days in violation of a known company rule. The employer's own testimony shows this not to be true, as there was an excess of text messages passing back and forth between the claimant and the kitchen manager stating she would not be in to work and why.

The employer was aware of the restrictions and the kitchen manager did not make any arrangements on May 19, 2012, for there to be someone in the kitchen to assist Ms. Martinez since she herself was not available to be there.

The record establishes the claimant did not quit by being no-call/no-show to work for three days. The absences were due to properly reported illnesses which are not misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Disqualification may not be imposed

DECISION:

The representative's decision of September 28, 2012, reference 02, is reversed. Jennifer Martinez is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw