

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE T RICHMOND
Claimant

APPEAL NO. 15A-UI-07678-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 06/07/15
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Stephanie Richmond (claimant) appealed a representative's June 29, 2015, decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Care Initiative (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 3, 2015. The claimant participated personally. The employer was represented by Alyce Smolsky, Hearings Representative, and participated by Rachel Heilskov, Assistant Administrator, and Teri Osborn, Administrator. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from August 26, 2013, through January 9, 2014. She was rehired on October 28, 2014, as a full-time certified nurse's assistant. The claimant signed for receipt of the employer's handbook on October 28, 2014. The handbook indicates an employee must notify the supervisor of any absence at least two hours prior to the start of the shift. She signed an agreement for rehire on August 28, 2014, stating she knew that any no-call/no-show or corrective action for attendance during her first year of re-employment would result in her immediate termination.

On January 19, 2015, the claimant properly reported her absence because her two-year-old was sick with influenza A. On January 20, 2015, the claimant improperly reported her absence from work because she did not have a babysitter. On January 21, 2015, the claimant did not appear for work or notify the employer of her absence. The employer assumed the claimant quit work when she stopped appearing for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.25(33) 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:

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

A voluntary leaving of employment 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's intention to voluntarily leave work was evidenced by her actions. When an employee quits work because she believes her performance is not to the satisfaction of the employer and the employer has not requested her to leave, her leaving is without good cause attributable to the employer. The claimant left work because she thought her attendance would result in her termination even though the employer did not request her to leave. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's June 29, 2015, decision (reference 03) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css