

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMRA L ANDERSON

Claimant

KOHL'S DEPARTMENT STORES INC

Employer

APPEAL NO. 12A-UI-07381-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/20/12

Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated June 14, 2012, reference 01, which held that the claimant was eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 16, 2012. Claimant participated. The employer participated by Matt Flattery, the store manager. The record consists of the testimony of Amra Anderson and the testimony of Matt Flattery. At the time of the hearing, the administrative law judge believed there to be 19 exhibits from the employer. In reviewing the exhibits after the hearing, it was determined that there were actually 21 pages of exhibits. The exhibits were discussed on the record and the claimant had no objection. The exhibits had been sent to the claimant prior to the hearing. The administrative law judge has marked the exhibits as Employer's Exhibits 1-21 and received them as part of the record.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a full-time sales floor department supervisor at the employer's store located in Sioux City, Iowa. The claimant's date of hire was August 30, 2005. The claimant's last day of work was May 3, 2012. She was considered to have voluntarily quit her job as of May 4, 2012.

On May 3, 2012, the claimant was scheduled to work from 9:00 a.m. through 5:30 p.m. She was the only supervisor working. The claimant has a medical condition and needed to take some medication. She asked her supervisor for a lunch break and he refused. She was finally allowed to take a lunch break at 1:50 p.m. The claimant was very concerned about her medication and left the store. She did not come back after her lunch break. She was considered to have abandoned her job by failing to return after her lunch break.

The employer called the claimant the next day and she informed the employer she was not coming in because she was sick. She did not intend to quit her job.

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The issue in this case is whether the claimant's failure to return to work following her lunch break on May 3, 2012, constitutes an intent on her part to sever the employment relationship. The claimant testified that she was upset about being the only supervisor on duty on May 3, 2012, and that she was initially not allowed a lunch break. She needed to take some medication and when she was finally allowed a lunch break, she was so concerned about herself that she did not return to work. She admitted that she did not ask for permission to leave for the rest of her shift. The claimant did not return to work the next day because she was sick.

The administrative law judge believes that the claimant did not intend to quit her job when she failed to return from her lunch break. She may have exercised poor judgment in leaving without permission but she was overwhelmed by being the only supervisor on duty; the initial refusal for a lunch break; and her concern over medication. She testified that she did not intend to quit her job. Given the totality of the circumstances there is insufficient evidence of an intent on the claimant's part to end her employment. The claimant did not voluntarily quit without good cause attributable to the employer. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated June 14, 2012, reference 01, is affirmed..
Unemployment insurance benefits are allowed provided, claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css