

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LORRAINE A ROLING**

Claimant

**APPEAL NO: 10A-UI-15230-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AREA RESIDENTIAL CARE**

Employer

**OC: 10/03/10**

**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Lorraine A. Roling (claimant) appealed a representative's October 27, 2010 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Area Residential Care (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 15, 2010. This appeal was consolidated for hearing with one related appeal, 10A-UI-15231-DT. The claimant participated in the hearing and was represented by Emilie Roth Richardson. Cindy Leifker appeared on the employer's behalf and presented testimony from two other witnesses, Beth Preston and Teri Pitzen. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on October 23, 2008. She worked full time as a second shift apartment instructor in the employer's human services agency providing services to person with disabilities. Her last day of work was September 23, 2010.

In early August 2010 a friend of the claimant informed her that plane tickets had been purchased to take the claimant on a trip for her birthday. The claimant informed her supervisor, Ms. Preston, who indicated she would try to work around the trip, but the claimant needed to put in a written request. The claimant did put in her written request on August 16, seeking PTO (paid time off) for the period September 24 through October 2. However, as of August 16 the claimant's work group, comprising about ten employees, had two full-time vacancies and two part-time vacancies. Ms. Preston attempted to work the schedule so that the remaining employees could cover the full period the claimant was seeking to be off work, but was unable to do so. As a result, on August 17, she gave the claimant a written denial of the PTO/vacation

request, indicating that this could be reconsidered if the claimant was more successful in finding coworkers who would agree to work additional shifts.

Between August 17 and about September 13 the claimant and Ms. Preston periodically referred to the upcoming desired PTO/vacation period, with Ms. Preston affirming that the leave was still not approved unless the claimant could find coworkers willing to cover for her, and the claimant indicating that she was also not successful in finding coverage. On or about September 13 the claimant contacted Ms. Leifker, the community services director, and explained the situation. Ms. Leifker consulted with her subordinate, Ms. Preston, and corroborated that the regular employees were not available to cover all the time the claimant was seeking to be off. She therefore recontacted the claimant on or about September 14 and further confirmed that the PTO/vacation request was denied unless the claimant could find coverage. She further responded to the claimant's query as to the potential consequences by confirming that if she left on the trip without obtaining coverage, she would likely lose her job.

After working her last shift on the evening of September 23, the claimant called and left a message for Ms. Preston indicating that she was leaving on her trip and would not be in for her shifts beginning September 24. The employer sent her a letter on September 29 advising that it was deeming her to have voluntarily quit by job abandonment.

#### **REASONING AND CONCLUSIONS OF LAW:**

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that her separation was not “voluntary” as she had not desired to end the employment; She argues that it was the employer's action or inaction in failing to procure coverage for her requested leave period which led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). 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. The rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as where an employee leaves rather than reporting for assigned work. 871 IAC 24.25(27). Another specific situation which is construed as being a voluntary quit is where an employee leaves available work in order to take a vacation. 871 IAC 24.25(25).

The employer does not have an affirmative duty to provide coverage for all employee time off requests. When its attempts to find adequate coverage were unsuccessful, the employer was within its rights to deny the claimant's request due to the staffing shortage. The claimant affirmatively chose to leave consciously knowing that her request had been denied and that her leaving without coverage would likely result in the loss of her job. The claimant was the moving party, and therefore the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not satisfied her burden. Benefits are denied.

**DECISION:**

The representative's October 27, 2010 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of September 24, 2010, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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