

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDY C STEVENS

Claimant

APPEAL NO. 11A-UI-02040-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION

Employer

OC: 03/21/10

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 17, 2011, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 18, 2011. Claimant participated. Employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Wendy Stevens and Claimant's Exhibit A.

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 witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as an assembler for the employer at its manufacturing facility in Pella, Iowa. The claimant was hired on January 4, 1977. On October 19, 2010, the employer offered qualified employees, including the claimant, an opportunity to participate in a Voluntary Retirement Incentive Program. The claimant elected to participate. She retired from the employer. Her last day of work was November 29, 2010. The claimant could have elected to continue working.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.25(24) 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 § 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:

(24) The claimant left employment to accept retirement when such claimant could have continued working.

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 evidence is uncontroverted that the claimant elected to retire when offered an early retirement incentive program by her employer. The claimant did not have to retire and could have chosen to keep working. Under these circumstances it is clear that the separation of employment was initiated by the claimant, not the employer. If a claimant elects to retire voluntarily when she could have continued working, her leaving her employment is considered to be without good cause attributable to the employer. Benefits are denied.

DECISION:

The decision of the representative dated February 17, 2011, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs