

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LATANZA L ROBERTS
Claimant

APPEAL NO. 09A-UI-07870-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEATON CORPORATION
Employer

OC: 04/12/09
Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated May 21, 2009, reference 03, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 16, 2009. Claimant participated. Employer participated by Susan Murphy, Operations Manager.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer in November 2008. The claimant was employed by an agency that places and manages employees for other companies. The employer placed the claimant in the Proctor and Gamble plant in Iowa City in September 2008. The employer discharged the claimant for three-day no-call/no-show for the days of November 10, 12 and 16, 2009. The claimant spoke to her supervisor Ron and told him she needed to take some time off to study for an exam. The claimant was told to call in when she was ready to return. The claimant went in for her check and was told she was terminated for no-call/no-show. The employer's computer records show that the claimant was called on November 10, 12 and 16 by her supervisors to see why she was not at work. The employer has a policy which it provided the claimant which states that three-day no-call/no-show is grounds for termination.

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 claimant has the burden of proof in a voluntary quit to show that the quit was attributable to the employer.

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.

In this case the employer provided convincing proof that the claimant did not call or show up at work for three days. The employer left messages for the claimant for three days. The claimant may have had permission to miss some time to study for an exam but the evidence is that she exceeded that time and did not respond to request from her employer to contact them for three consecutive work days. The claimant could not remember the days she took off to study or when the exam took place. The claimant's testimony is not as convincing as the employer's. The claimant is deemed to have voluntarily quit without good cause attributable to the employer.

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when she was no-call/no-show for three days.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual,

benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The Claims Section shall determine the amount of the overpayment and if the claimant must repay that amount.

DECISION:

The decision of the representative dated May 21, 2009, reference 03, is reversed. 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. This matter is remanded to the Claims Section shall determine the amount of the overpayment and if the claimant must repay that amount.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/pjs