

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARIANA R YEGGER
Claimant

APPEAL NO. 14A-UI-03498-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PILOT TRAVEL CENTERS LLC
Employer

OC: 02/16/14
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated March 24, 2014, reference 05, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on April 22, 2014, by telephone conference call. The claimant failed to respond to the hearing notice and did not participate. The employer participated by Jason Zeck, general manager. The record consists of the testimony of Jason Zeck and Employer's Exhibits 1 and 2. Official notice is taken of agency records.

ISSUE:

Whether the claimant was separated from her employment for any disqualifying reason.

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 employer is a truck stop. The claimant worked at the store located in Evansdale, Iowa. The claimant was hired sometime in the summer of 2013. She was a full-time cashier. Her last day of work was in October 2013. She went on maternity leave at that time. She was scheduled to return to work on December 25, 2013. She did contact the employer just prior to the expiration of her leave to say that she was ready to return but she did not want to work third shift. The manager, Jason Zeck, told the claimant that she needed to come in and talk to him about her schedule. The claimant never came in nor did she contact the employer again. The employer considered her to have voluntarily 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.

871 IAC 24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

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 is not eligible for unemployment insurance benefits. The evidence showed that the claimant went out on maternity leave, which is a leave of absence. The claimant was scheduled to return to work on December 25, 2013. She did not return to work and after one phone call with the employer, she failed to maintain any contact with the employer. The most reasonable inference from the evidence is that the claimant abandoned her job. This is considered a voluntary quit and is without good cause attributable to the employer. Benefits are denied.

The claimant established an original claim for unemployment insurance benefits on February 16, 2014. The claimant is presently disqualified due to a voluntary quit with another employer. The claimant has not been paid any unemployment insurance benefits and therefore the overpayment issue is moot.

DECISION:

The decision of the representative dated March 24, 2014, reference 05, 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 benefits amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs