

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LONNA L BIEGGER
Claimant

APPEAL NO. 08A-UI-06167-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT/HUMAN SVCS-AREA & COUNTY
Employer

**OC: 06/01/08 R: 02
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 24, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 22, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Peter Cipriano participated in the hearing on behalf of the employer with witnesses, Barbara Lacina and Dena Sloan.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer as a support recovery officer from September 29, 2000, to December 12, 2007. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and would be considered to have voluntarily quit employment after three days of absence without notice to the employer.

The claimant was placed on a disciplinary suspension due to her irregular attendance on December 12, 2007. She understood that she was to return to work on December 19. She was scheduled to work on December 19, 20, and 21. She failed to report to work and did not contact the employer regarding her absences. On December 21, the employer sent a register letter to the claimant informing her that the employer considered her to have abandoned her job due to three days of unreported absence. The claimant received this letter.

The claimant did not return to work after her suspension because she was suffering from depression and anxiety. She had previously been granted leave under the Family and Medical Leave Act (FMLA) due to her mental condition. The final problem related to being contacted by a child protective services worker on November 28, 2007, about a report filed about her children's wellbeing based on a concern regarding the claimant's mental state. The worker identified the report as coming from two unidentified coworkers who thought she might be taking illegal drugs. The worker requested and the claimant agreed to submit to a drug test. Her

children were questioned. This investigation created additional stress on the claimant so that she was not sure whether she wanted to go back to work or not. She did not report to work or call in due to the turmoil in her life at the time.

Because she was having difficulty coping with the things going in her life, friends encouraged her to go to the hospital emergency room on December 26. On the same day, a friend contacted her supervisor, Dena Sloan, in hopes of saving her job and asked for FMLA paperwork for the claimant and a health professional to complete. The paperwork was faxed to the emergency room. The claimant called Sloan. She told Sloan that the emergency room would not fill out the FMLA paperwork and her regular doctor was out of the office for the holidays. Sloan told the claimant that she would have 15 days to submit the FMLA paperwork. She told the claimant that the employer would reconsider its decision that she had abandoned her job if the paperwork justified her absences and provided an excuse for her failure to call in.

The claimant never pursued getting the FMLA paperwork because she decided she did not want to return to work. This decision was based on her resentment about coworkers reporting her to child protective services and her belief that her supervisors were unsympathetic regarding her mental health issue.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1.

The unemployment insurance rules state that a claimant absent for three days without giving notice to employer in violation of company rule is presumed to have quit employment without good cause attributable to the employer. 871 IAC 24.25(4). This rule creates a presumption that can be overcome by weighty evidence to the contrary. The claimant testified that she did not report to work or contact the employer after her disciplinary suspension due to the turmoil in her life. There is no medical evidence, however, supporting this testimony that the claimant was unable to work or incapable of calling in to notify the employer about her absences. The claimant is deemed to have quit work due to her three days of unreported absences.

The claimant's reasons for not returning to work do not establish any intolerable working conditions or other good cause for quitting attributable to the employer. The fact that a coworker reported a concern about the claimant's mental state and her ability to care for her children does not establish good cause attributable to the employer. The claimant has no idea who made the report or proof that it was a supervisor. The employer has the right to administer its absenteeism policy, which can include discipline for excessive absenteeism, even if the absences are due to illness, provided they are not specifically covered by FMLA leave. The claimant has not provided any medical evidence to show she was compelled to leave employment due to a health condition attributable to the employer as required by the unemployment insurance rules in 871 IAC 24.26(6)b.

DECISION:

The unemployment insurance decision dated June 24, 2008, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid

wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css