

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ROBIN L ROBY
1065 – 21ST ST #6
DES MOINES IA 50311

WALGREEN COMPANY
c/o TALX UC EXPRESS
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ST LOUIS MO 63166-0283

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Appeal Number: 04A-UI-02675-CT
OC: 02/15/04 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Robin Roby filed an appeal from a representative's decision dated March 10, 2004, reference 02, which denied benefits based on her separation from Walgreen Company. After due notice was issued, a hearing was held by telephone on March 31, 2004. Ms. Roby participated personally and was represented by Robert Montgomery, Attorney at Law, who offered additional testimony from John Roby. The employer participated by David Watts and John Lipshaw, Store Managers, and was represented by Connie Hickerson of Talx UC Express. The hearing was recessed and reconvened on April 6, 2004. Ms. Roby again participated and was represented by Robert Montgomery. Mr. Watts and Mr. Lipshaw again participated for the employer and were represented by Doretha Washington of Talx UC Express.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Roby began working for Walgreen Company on March 6, 2003 and was separated from the employment on February 17, 2004. She was employed full time as a cosmetic clerk. On February 17, she entered the office where Mr. Lipshaw was and he commented on the fact that she had not put away some lingerie items as requested. She had left a note with the merchandise explaining why it was not moved as directed. Mr. Lipshaw commented that he was sick and tired of employees not doing as directed and that he would fire everyone and replace them if he could. Ms. Roby responded that it was not his “fucking” job to micromanage her and that he could write her up. Mr. Lipshaw then paged Mr. Watts to come to the office. Both Ms. Roby and Mr. Lipshaw explained their version of what occurred and Mr. Lipshaw was then asked by Mr. Watts to leave the room while he spoke with Ms. Roby.

When Mr. Lipshaw returned to the room, Ms. Roby continued to be upset and to use profanity. She was told by Mr. Watts that she could be fired if she continued to use profanity. He asked if she wanted to go home to have an opportunity to calm down. She apologized for her language and the conversation proceeded. At some point, Ms. Roby said “kiss my butt, I quit” and left. Before leaving, she placed her smock and nametag on the desk. She also used the phrase “fuck this” as she was leaving. At some point during the exchange that day, Mr. Lipshaw apologized to Ms. Roby if she felt she was being treated unfairly by him. After she left the store, she explained to her husband what had happened and he went to the store to talk to the employer. Mr. Roby was told that his wife no longer had a job at the store. She had previously walked off the job on September 7, 2003 because she was being sent to the front register to work. She was allowed to return to work.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this matter is whether Ms. Roby’s separation was a quit or a discharge. She initiated the separation when she told the employer “kiss my butt, I quit” and then left. It is true that Mr. Watts had suggested she go home and calm down. However, she did not leave at that point. She did not leave until after she told the employer she was quitting, 15 to 20 minutes later. For the above reason, the administrative law judge concludes that the separation was a voluntary quit. An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code Section 96.5(1). Ms. Roby had the burden of proving that her quit was for good cause attributable to the employer. Iowa Code Section 96.6(2). She quit because she was being reprimanded for having failed to perform an assigned task. Mr. Lipshaw was not verbally abusing her. His apology was not because he felt he had mistreated her but because she apparently felt he had. Although Mr. Lipshaw’s face may have been red and he may have been talking fast, the administrative law judge does not believe he was verbally abusive to Ms. Roby.

The employer had the right to reprimand Ms. Roby if she failed to perform an assigned task. An individual who leaves employment after being reprimanded is presumed to have quit for no good cause attributable to the employer. 871 IAC 24.25(28). The evidence of record failed to establish that the reprimand of February 17 was administered in such a manner as to overcome the presumption that the quit was due to the reprimand itself. For the reasons cited herein, the administrative law judge concludes that Ms. Roby has failed to establish that her quit was for good cause attributable to the employer.

Even if the administrative law judge were to conclude that Ms. Roby was discharged, she would still not be entitled to job insurance benefits. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer would have the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Roby was warned by Mr. Watts during the meeting that she should refrain from using profanity as it could result in her discharge. In spite of the verbal warning, she continued to use profanity during the meeting of February 17. Her statement, "kiss my butt," was clearly insubordinate. While isolated instances of profanity may have been tolerated by the employer, there was no evidence that the employer condoned such language being directed to a manager. For the above reasons, if the separation were considered a discharge, Ms. Roby would be disqualified from receiving benefits based on her misconduct.

DECISION:

The representative's decision dated March 10, 2004, reference 02, is hereby affirmed. Ms. Roby voluntarily quit her employment for no good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/kjf