

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELISSA K WEUVE**  
Claimant

**APPEAL NO. 11A-UI-12838-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BROWNS CREW CAR OF WYOMING INC**  
Employer

**OC: 03/13/11  
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Leaving  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

While participating in the hearing for appeal number 11A-UI-11781-LT, the claimant and employer waived notice of and participation in a fact-finding interview on the issue of the separation from employment that had not yet been determined. After waiver of notice, a hearing was held by telephone conference call on September 30, 2011. Claimant participated. Employer participated through Johniece Doublin.

**ISSUE:**

The issue is whether claimant quit the employment without good cause attributable to the employer or if she was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as driver from August 2008 and was separated from employment on February 4, 2011. Her last day of work was February 1, 2011. She did not report for work on February 2, 3, and 4, 2011 and was considered to have voluntarily quit the employment according to company policy. The lead driver notified the off-site manager of her failure to call or report for work. She had three counseling forms for not showing up for work without calling or missing days. In July 3, 2009 she was a no-call, no-show and was given a write-up. On September 28, 29, 30, October 1, 8, 2010, she was absent for unknown reasons and was issued a counseling letter. Her mother had cancer and the absence was approved by Off-Site Manager Chuck Bartholomew. On April 14, 2010 she was counseled for missing another four to seven days for various unknown reasons. She recalled that her last day of work was sometime between December 20 and 30, 2010, when she was snowed in and claimed the lead driver, Jim Cowan, told her not to come back. She did not contact anyone other than the lead driver about her employment status and knew the employer was concerned about her attendance. The employer issued payroll wages to claimant, either by direct deposit or debit-type paycard, in January and February 2011, and a final payout in April 2011. Paystubs are mailed.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

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(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 § 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. While the claimant argues she was discharged in December 2010, the employer's testimony is credible that she worked in January 2011 and her last day of work was February 1, 2011, after which she discontinued reporting for work. Since claimant did not follow up with management personnel about her employment status or continue reporting for work, she is considered to have abandoned her job. Benefits are withheld.

**DECISION:**

The claimant's February 4, 2011 separation from employment is disqualifying. The claimant voluntarily left her employment without 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 benefit amount, provided she is otherwise eligible. Inasmuch as no benefits were claimed or paid, no overpayment applies.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw