

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN M BARRY
Claimant

APPEAL NO. 12A-UI-10483-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GORDMANS DISTRIBUTION
Employer

OC: 04/25/10
Claimant: Appellant (4-R)

Iowa Code Section 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

Karen Barry filed a timely appeal from the August 24, 2012, reference 05, decision that denied benefits based on an agency conclusion that she had voluntarily quit employment with Gordmans Distribution on June 17, 2012 without good cause attributable to the employer. After due notice was issued, a hearing was held on September 26, 2012. Ms. Barry participated. Angela Rodenburg, Human Resources Manager, represented the employer.

ISSUE:

Whether Ms. Barry separated from the employment for a reason that would disqualify her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: the employer is a retail merchandise processing and distribution center located in Omaha. Distribution. Karen Barry was employed by Gordmans Distribution as a part-time merchandise marker from February 8, 2012 and last performed work for the employer on June 25, 2012. At the time of hire, the employer told Ms. Barry she could expect to work anywhere from 15 to 35 hours per week. As it turned out, the employment generally offered 24 to 35 hours. The work hours were generally 4:30 p.m. to 10:45 p.m. During one week, the week that ended June 23, 2012, the employer did not have any freight to process and did not have any work for Ms. Barry. Ms. Barry returned to work the next week, but worked only the Monday, June 25. Ms. Barry left before the end of the work day with permission because she was not feeling well. Ms. Barry attributes her not feeling well that day to the temperature in the distribution center. The employer air conditions the distribution center, but during the summer months the temperature is allowed to remain at 89 degrees.

After Ms. Barry went home early on June 25, she called in absences on June 26, 27 and 29. On June 28, Ms. Barry told the employer she was still not feeling well. Ms. Barry said she would provide a report on her health status the next day. After Ms. Barry had been gone from work for three consecutive days, the employer expected her to complete leave of absence paperwork to

support her continued need to be off work. To that end, Human Resources Assistant Chris Fuhrar telephoned Ms. Barry on July 2. Ms. Barry told Ms. Fuhrar that she hoped to have more information about her health status later that day. The employer did not hear further from Ms. Barry.

On July 6, the employer sent Ms. Barry a letter requesting medical documentation in support of the days she had been absent and to support her continued need to be absent. The letter provided Ms. Barry with a July 26 deadline for response. The employer did not hear further from Ms. Barry and Ms. Barry did not return to the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

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 weight of the evidence in the record establishes that Ms. Barry voluntarily quit the part-time employment for personal reasons and not for good cause attributable to the employer. The weight of the evidence fails to support Ms. Barry's assertion that the employment ended because someone from the employer told Ms. Barry there was no further work for her. The evidence does indicate that there was no work for Ms. Barry during the week that ended June 23, 2012, but that there was plenty of work for Mr. Barry during the following week. Ms. Barry has presented insufficient evidence to establish that her quit was based on a medical condition that made it necessary for her to leave the employment to avoid serious harm. Ms. Barry provided no medical documentation to the employer and provided no medical

documentation for the hearing. The weight of the evidence fails to support Ms. Barry's assertion that the temperature in the distribution center created intolerable or detrimental working conditions. While working in an 89 degrees warehouse environment might not be the most pleasant work, the temperature in the warehouse did not rise to the level of an intolerable or detrimental working condition. The weight of the evidence indicates that Ms. Barry voluntarily quit due to dissatisfaction with the work environment. Quits based on dissatisfaction with the work environment are presumed to be without good cause attributable to the employer See Iowa Admin. Code 871 IAC 24.25(21).

Because Ms. Barry's voluntarily quit was without good cause attributable to the employer, Ms. Barry would be disqualified for benefits *based on base period wages earned from this employment* until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Barry.

However, a person who voluntarily quits *part-time* employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Thus, despite the voluntary quit from the part-time employment, Ms. Barry remains eligible for benefits based on wages earned from employment other than Gordmans Distribution, provided she meets all other eligibility requirements. This matter will be remanded to the Claims Division for redetermination of Ms. Barry's eligibility for reduced benefits.

DECISION:

The Agency representative's August 24, 2012, reference 05, decision is modified as follows. The claimant voluntarily quit the part-time employment without good cause attributable to the employer. The claimant is disqualified for benefits *based on base period wages earned from this employment* until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. This employer's account shall not be charged. The claimant remains eligible for benefits based on wages earned from employment other than Gordmans Distribution, provided she meets all other eligibility requirements. This matter is remanded to the Claims Division for redetermination of the claimant's eligibility for reduced benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs