

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA C TOMLINSON
Claimant

APPEAL NO. 09A-UI-18139-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GIT-N-GO CONVENIENCE STORES INC
Employer

**Original Claim: 11/01/09
Claimant: Respondent (2-R)**

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Git-N-Go, filed an appeal from a decision dated November 25, 2009, reference 01. The decision allowed benefits to the claimant, Angela Tomlinson. After due notice was issued, a hearing was held by telephone conference call on January 12, 2010. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Supervisor John Judge.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Angela Tomlinson was employed by Gin-N-Go from July 15, 2009 until October 15, 2009 as a full-time cashier. She received a copy of the employee handbook at the time of hire.

On October 9, 2009, the claimant was scheduled to work a shift beginning at 4:00 p.m. Around 1:00 p.m. she brought a note into the store where she worked and gave it to another cashier. The note was from a doctor and it stated the claimant's husband or boyfriend had been seen at the clinic and he was unable to provide Ms. Tomlinson with child care, and therefore she could not work.

The cashier had no authority to accept the note or excuse the claimant, so she was directed to go to the corporate office. When she arrived she spoke with Supervisor John Judge. He notified her that the doctor's excuse pertained only to her husband or boyfriend's medical status, not hers. The man provided Ms. Tomlinson with child care and Mr. Judge said if child care was the only reason she could not work, she would have to make other arrangements and be at work at 4:00 p.m. as scheduled. She agreed she would do so but was no-call/no-show to work after that date.

Angela Tomlinson has received unemployment benefits since filing a claim with an effective date of November 1, 2009.

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 24.25(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 section 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 section 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.

871 IAC 24.25(17) 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 section 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 section 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:

(17) The claimant left because of lack of child care.

The claimant was no-call/no-show to work for more than three days in violation of a known company rule. Her failure to come to work was apparently due to lack of child care because her husband or boyfriend was ill. Quitting for lack of child care, or for being no-call/no-show to work for three days, does not constitute good cause attributable to the employer for quitting under the provisions of the above Administrative Code sections. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from

any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of November 25, 2009, reference 01, is reversed. Angela Tomlinson is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw