

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GEORGIA M SMITH
Claimant

A Y M INC
Employer

APPEAL NO. 18A-UI-12314-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/02/18
Claimant: Appellant (1)

Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 19, 2018, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on January 11, 2019. Claimant participated. Employer failed to respond to the hearing notice and did not participate. Employer's Exhibit A was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: As claimant was the only person to testify in this hearing, all findings of fact are derived from claimant's testimony. Claimant last worked for employer on August 20, 2018. On August 20, 2018, claimant's mother was injured in an automobile accident. After this date, claimant went on FMLA for the next 12 weeks in order to care for her mother. Those twelve weeks ended on or around November 19, 2018. For the next week, claimant used her accrued vacation time to stay off from work. Additionally, at this time claimant asked that she be allowed to extend her time off from work by being placed on a Leave of Absence. Employer denied this request.

On or shortly before November 26, 2018, employer called claimant to see if she was returning to work on that date. Claimant stated that she would not be returning. Claimant did not come to work on November 26, 27, or 28, 2018. Claimant didn't make daily calls into work according to company rules as she'd already told employer that she wouldn't be coming into work. Employer terminated claimant for attendance violations and not properly following call in procedures.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.25(23) 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:

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because she chose to remain taking care of her ailing mother after her FMLA had run out. Whereas it is understandable that claimant would want to care for her mother, employer does not have to grant time over and above the FMLA time that employer did grant to claimant. Claimant's choice not to return to work after her FMLA and vacation time had run out amounted to a voluntary quit. Said voluntary quit was not attributable to employer. To rule otherwise would be to allow an employee any time that they wanted to care for a family member and still be eligible to receive unemployment benefits.

DECISION:

The decision of the representative dated December 19, 2018, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn