

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY L GARVEY
Claimant

APPEAL NO. 13A-UI-11736-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

DHANLAXMI INC
Employer

OC: 09/22/13
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated October 11, 2013, reference 02, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on November 12, 2013, in Davenport, Iowa. The claimant participated personally. The employer participated by Rica Patel, general manager. The record consists of the testimony of Amy Garvey; the testimony of Rica Patel; and Claimant's Exhibit A.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a hotel located in Davenport, Iowa. The claimant was hired on July 31, 2012. She worked at the front desk and was a full-time employee. The claimant's last day of work was August 17, 2013.

The claimant had ongoing difficulties with drug abuse. She was given two weeks off in July 2013 by the employer in order for the claimant to participate in treatment. The claimant returned to work after only one week. On August 19, 2013, the claimant was scheduled to work but she instead went to the hospital. She spoke to her employer on August 19, 2013, and said that she was going into treatment. On August 26, 2013, the claimant's mother asked for her paycheck. The parties dispute who picked up the check but the police were called so that there would be a record that the paycheck was given to either the claimant or her mother. The claimant never provided the employer with any type of return to work slip and did not offer her services to her employer. She transitioned from residential treatment to a halfway house on September 16, 2013. (Exhibit A)

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(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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 claimant is not eligible for unemployment insurance benefits. The evidence showed that the claimant, in effect, asked for a leave of absence on August 19, 2013, so that she could attend treatment for a medical problem that was not work related. The claimant was in treatment from August 20, 2013, until the present time. She went to a half-way house on September 16, 2013. The claimant never made a request to return to work. She did not provide the employer with any medical documentation that she could return to work. Rica Patel, the employer's general manager, testified that she did not terminate the claimant and that she was waiting for her to return. This was consistent with what was done in July 2013, when the claimant was given two weeks off for treatment. Since the claimant did not provide the employer with documentation that she could return to work and she did not offer her services to the employer, she is considered to have voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The decision of the representative dated October 11, 2013, reference 02, 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.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs