

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABBY M TRUSTY
Claimant

APPEAL NO. 13A-UI-10872-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

KUM & GO LC
Employer

OC: 08/11/13
Claimant: Appellant (5)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated September 13, 2013, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on November 20, 2013. The claimant participated personally. The employer participated by James Eckman, general manager. The record consists of the testimony of Abby Trusty and the testimony of James Eckman.

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 convenience store chain. The claimant worked at the store located in Clear Lake, Iowa. Her job was sales manager and she was a full-time employee. She was hired on March 10, 2009. Her last day of work was August 4, 2013. She gave the employer a two-week notice of her intent to resign on August 5, 2013. She wanted to take a week of vacation and then work one additional week. She was quitting because she was dissatisfied with the staffing of the store and she did not feel that management was addressing the problem. The employer decided to accept her resignation immediately and she did not work during the two-week notice period.

The claimant did not establish her claim for unemployment insurance benefits until August 11, 2013.

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(16) 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:

(16) The claimant is deemed to have left if such claimant becomes incarcerated.

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 eligible for unemployment insurance benefits from August 11, 2013, through August 19, 2013. She is not eligible for unemployment insurance benefits after August 19, 2013, because her quit was not for good cause attributable to the employer. The claimant testified that she quit because she did not feel that she had adequate help in the store. Employees would call in and she would sometimes have to work by herself or with one other person. She was dissatisfied with management response to this situation. Although the administrative law judge can understand the claimant's frustration, this is not an atypical situation that management must face on a day to day basis. The lack of help did not occur on a daily basis, at least according to the evidence provided in this case. The claimant just became dissatisfied with the working environment. There is insufficient evidence of an intolerable or unsafe workplace. Since the claimant did not quit for good cause attributable to the employer, benefits are denied after August 19, 2013.

DECISION:

The decision of the representative dated September 13, 2013, reference 01, is modified without effect. Unemployment insurance benefits are allowed from August 11, 2013, through August 19, 2013. Unemployment insurance benefits shall then 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