

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LINDA L RABE
Claimant

DAIRY QUEEN
Employer

APPEAL 15A-UI-13077-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 09/27/15
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 23, 2015, (reference 02) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on December 15, 2015. The claimant participated personally. Ashley Starkey, daughter of the claimant, and Deborah Hughes, domestic partner of the claimant, also testified. The employer participated through Jeff Wieland, Director of Human Resources. Claimant Exhibit A was admitted into evidence.

ISSUE:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as an assistant manager trainee beginning October 12, 2015 and was separated from employment on October 21, 2015, when she resigned without notice. Continuing work was available.

The claimant suffers from spinal stenosis, bursitis, arthritis, grave's disease and fibromyalgia. The claimant did not inquire about the physical requirements before accepting the position with this employer, but had been previously employed as a manager in fast food approximately 25 years ago. The claimant most recently had surgery over the past year. The claimant learned that she would be required to lift buckets of ice, help unload trucks and other physical demands. The claimant determined it was best to discontinue training and resign, rather than continue to be in physical pain after her shifts. The claimant's decision to resign was not based upon the advice of a treating physician. Prior to resigning, the claimant did not seek medical advice or accommodations.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(21) 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 § 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 § 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:

(21) The claimant left because of dissatisfaction with the work environment.

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.

In this case, the claimant had a history of prior health problems and accepted the position as an assistant manager for Dairy Queen based on her expectations of the job from prior fast food experience approximately 25 years ago. As a result of the work conditions, the claimant determined she could not return to work due to associated pain with performing the job duties, and resigned. No medical documentation was provided to support the claimant's resignation. Based on the evidence presented, the claimant's leaving the employment may have been based upon good personal reasons, but it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are withheld.

DECISION:

The November 23, 2015, (reference 02) unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/css