

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALESON MATHES

Claimant

APPEAL NO. 08A-UI-00751-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES

Employer

**OC: 01/06/08 R: 03
Claimant: Appellant (1)**

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Aleson Mathes (claimant) appealed an unemployment insurance decision dated January 22, 2008, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily left her employment with Care Initiatives (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 6, 2008. The claimant participated in the hearing with her fiancé Tim VanderEcken. The employer participated through Kyle Merry, Administrator; Della Walag, Housekeeping Supervisor; Sheila Moore, Business Office Manager; and Lynn Corbeil, Employer Representative. Employer's Exhibits One through Six were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time employee working in housekeeping and laundry from July 22, 2004 through December 3, 2007. She went on a medical leave on September 1, 2007 due to complications with her pregnancy. The claimant and her treating physician completed the required paperwork so that she began taking leave under the Family Medical Leave Act (FMLA) on September 10, 2007. She was advised verbally and in writing by Sheila Moore, Business Office Manager, that she could only take off 12 weeks under FMLA. The claimant's FMLA expired on December 3, 2007 and she was expected to return no later than that date. On September 12, 2007, the claimant signed a document indicating she understood and agreed to return after her 12 weeks of leave. The document warned her that if she did not return to work after 12 weeks or did not contact her supervisor by that date, she would be considered to have abandoned her job. The claimant was given copies

of all of her FMLA paperwork by Ms. Moore and the employer provided documentation that the claimant had previously signed for receipt of the FMLA and pregnancy leave policies.

Della Walag, the claimant's supervisor, called her on October 18, 2007 to check on her and reminded the claimant about the FMLA papers. The employer called the claimant's telephone number on November 26, 2007 and spoke with the claimant's grandfather. The claimant was not there but her grandfather informed the employer that the claimant delivered her baby on November 3, 2007. Ms. Walag tried calling the claimant two more times around December 1, 2007 but could not reach her. The claimant's grandfather finally reported that the claimant did not live there and he had no address for her. The claimant did not call her employer or return to work on December 3, 2007 when her FMLA expired. She testified in the hearing that she had gall bladder surgery on December 14, 2007 but admitted she did not inform the employer of this information. The claimant called her employer on January 7, 2007 indicating she was released to return to work and was informed that she was considered to have abandoned her job due to lack of contact.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by not calling the employer or returning to work on December 3, 2007 when she had exhausted her leave under the FMLA. She was aware of the return to work date and signed an additional document confirming she was aware she would be considered to have abandoned her job if she failed to contact the employer or return to work after 12 weeks of FMLA. However, even knowing this fact, the claimant elected not to contact the employer when she could not return.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

It should be noted that an individual who quits part-time employment without good cause can still receive unemployment insurance benefits if he or she is monetarily eligible, based on wages paid by other base-period employers. 871 IAC 24.27. The claimant is not monetarily eligible as she has no wages from any other employers.

DECISION:

The unemployment insurance decision dated January 22, 2008, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are

withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css