

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ARACELI MUNN**  
Claimant

**APPEAL NO. 12A-UI-01273-VS**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KRAFT FOODS GLOBAL INC**  
Employer

**OC: 12/25/11  
Claimant: Appellant (2-R)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated January 27, 2012, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 14, 2012, in Davenport, Iowa. The claimant participated. The employer failed to show up for the hearing. The record consists of the testimony of Araceli Munn and Claimant's Exhibits A and B.

**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 witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked at the Oscar Mayer plant in Davenport, Iowa. She was hired on November 6, 2006. In October 2011, the claimant had personal health problems, which were not work-related. She was given Family Medical Leave Act (FMLA). The claimant had some difficulty getting her doctor to fill out the necessary statement. She continued to call her employer every day she was scheduled to work. She also tried calling human resources and despite leaving many messages, no one called her back to discuss her situation.

The claimant then received a letter dated January 25, 2012, that informed her she had been terminated on December 19, 2011. The stated reason for her termination was that she was absent for two consecutive working days without notification. The letter does not specify what dates the claimant missed and/or failed to call. The claimant was calling even after her "termination" date, as she did not know that she had been terminated. The claimant never quit her job.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1). *Prairie Ridge Addiction Treatment Svcs. v. Jackson and EAB*, \_\_\_ N.W.2d \_\_\_, No. 11-0784 (Iowa Ct. App. Jan. 19, 2012). Disqualification from benefits pursuant to Iowa Code section 96.5(1) requires a finding that the quit was voluntary. *Geiken v. Lutheran Home for the Aged Ass'n*, 468 N.W.2d 223, 226 (Iowa 1991). A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. EAB*, 447 N.W. 2d 137, 138 (Iowa 1989); see also Iowa Admin. Code r. 871-24.25(35). An absence is not voluntary if returning to work would jeopardize the employee's health. A physician's work restriction is evidence an employee is not

medically able to work. *Wilson Trailer Co. v. Iowa Emp't. Sec. Comm'n*, 168 N.W.2d 771, 775-6 (Iowa 1969).

The evidence in this case established that it was the employer who initiated the separation of employment. The employer considered the claimant to have "voluntarily terminated" her employment by failing to call in for two consecutive work days. The claimant testified credibly that she did call in for every scheduled work shift and was calling even after her alleged quit. The claimant was off work due to medical reasons, and the most reasonable inference from the evidence is that the employer made the decision to terminate the claimant while she was off work for medical reasons. This is not a voluntary quit, either. The employer did not participate in the hearing and therefore the employer's true reason or motivation for ending the claimant's employment is unknown. The claimant will not be disqualified from receiving benefits due to the separation of employment.

The claimant's testimony does raise a question on whether she was able and available for work. This issue has not been considered by the Claims Section, nor was it listed on the notice of hearing. This case is remanded back to the Claims Section for investigation on if and when the claimant was able and available for work.

**DECISION:**

The representative's decision dated January 27, 2012, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible. This matter is remanded to the Claims Section for a determination on if and when the claimant was able and available for work. The claimant is not disqualified for benefits on the separation issues.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw