

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANITA D STEWARD
Claimant

APPEAL NO. 08A-UI-00045-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLARCOR AIR FILTRATION PRODUCTS
Employer

**OC: 11/25/07 R: 04
Claimant: Appellant (1)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 27, 2007, reference 01, that concluded she had voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on January 16, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Theresa Felger participated in the hearing on behalf of the employer with a witness, Brian Riley. Exhibits One through Four were admitted into evidence at the hearing.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer as an assembler from March 14, 2007, to October 29, 2007. The claimant was informed and understood that under the employer's work rules, employees were required to call in before the start of their shift to notify the employer if they were not able to report to work as scheduled and would be considered to have abandoned their job after two consecutive days of absence without calling in. The employer also has an attendance policy that assesses points for each hour an individual is late or absent from work, and provides for progressive discipline of a verbal warning, written warning, final written warning, and termination.

The claimant received a verbal warning on July 24 after she was absent from work on July 23, which placed her at 59 points under the employer's attendance policy. She received a written warning on August 23 after she was late for work on August 23, which placed her at 66 points. The claimant was informed that the next step under the employer's attendance policy was a final written warning.

The claimant was late for work on October 29 due to car problems, which placed her at 69 points. On October 30 the claimant could not get her car started. The claimant believed that she would automatically be discharged because the attendance policy provides for termination at 72 points. She did not call the employer on October 30 or October 31. In fact, the employer would not have discharged her, but instead would have followed its policy of issuing a final written warning. Even when an employee reaches 72 points after a final written warning, the employer can exercise discretion and allow the employee to continue working depending on the reasons for missing work.

On November 1, Theresa Felger called the claimant because she was concerned about her. She had checked the attendance phone and knew that the claimant had not called in. She asked the claimant if she was okay. The claimant responded that she was okay. When Felger asked the claimant why she had not reported to work, she told Felger about her car problems and she knew she was over the point limit. Felger then told the claimant that the employer considered her to have quit when she stopped reporting to work or calling in.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. Felger's testimony was much more believable than the claimant's and was corroborated by the testimony of Brian Riley. One factor in deciding credibility in this case, which would be supported by listening to the recording of the hearing, is that at various points when the employer's witnesses were testifying, the claimant reacted by laughing. When I confronted her about this near the end of the hearing, she claimed that she was laughing at something on the television. I do not believe this excuse was truthful. Her lack of candor about this undercuts her credibility on her claim that she called in on October 30.

Under the unemployment insurance rules, a claimant is presumed to have voluntarily quit employment after three days of absence without notice to the employer in violation of a company rule. 871 IAC 24.25(6). The employer has a work rule requiring employees to notify the employer about any absence. The claimant violated that rule on October 30, October 31, and November 1. She therefore is presumed to have voluntarily quit employment with good cause attributable to the employer. Furthermore, she stopped reporting to work on the assumption that she automatically was going to be dismissed, which was incorrect. The claimant has not shown good cause for quitting employment.

DECISION:

The unemployment insurance decision dated December 27, 2007, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw