

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICHOLLE R WALTO
Claimant

MEDIACOM COMMUNICATIONS
Employer

APPEAL 19A-UI-01143-SC

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/30/18
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

Nicholle R. Walto (claimant) filed an appeal from the January 30, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit after she missed three days of work and did not notify Mediacom Communications (employer). The parties were properly notified about the hearing. A hearing was held in Des Moines, Iowa at 9:00 a.m. on February 27, 2019. The claimant participated personally. The employer did not respond to the hearing notice and did not participate. The administrative law judge took official notice of the administrator record, specifically the fact-finding documents.

ISSUES:

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Recovery Asset Representative beginning on April 13, 2016, and her last day worked was January 2, 2019. The employer's attendance policy states three no-call/no-show absences will be considered a voluntary separation.

The claimant gave birth to her second child in 2018. The child had and continues to have significant health issues requiring two to three doctors' appointments each week. The claimant ran out of job protected leave under the Family Medical Leave Act (FMLA) in 2018.

The claimant filed her claim for unemployment insurance benefits effective December 30, 2018. After work on January 2, 2019, she voluntarily committed herself to the hospital seeking mental

health treatment. The claimant missed scheduled shifts on January 3, 4, and 7. She did not report her absences prior to being admitted to the hospital or during her absences.

The claimant was released to return to work on January 7. She contacted the employer but was not able to speak to anyone until the following day. At that time, the claimant was told she had missed three days of work without notification and was considered to have voluntarily left employment.

After the claimant learned she was separated from employment, she contacted childcare assistance and was told she would be able to place her kids back in daycare once she paid off her outstanding balance. The claimant has not yet paid that balance. She is a sole caregiver without day care for her children.

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. Benefits are denied.

Iowa Code section 96.5(1) provides, in relevant part:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

...

d. The individual left employment because of illness, injury, or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury, or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

...

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

Iowa Admin. Code r. 871-24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Even though the claimant did leave for good personal reasons to deal with her health and she sought employment after she was able to return to work, she failed to notify the employer of the absences prior to leaving as required by statute. Accordingly, benefits must be denied.

As benefits are denied, the issue of whether the claimant is able to and available for work is moot.

DECISION:

The January 30, 2019, reference 01, 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. The issue of whether she is able to and available for work is moot.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn