

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COLLEEN W COLLINS
Claimant

APPEAL NO. 09A-UI-06697-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**STERLING TRANSPORTATION SERVICES
INC**
Employer

OC: 04/05/09
Claimant: Appellant (5)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 28, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 29, 2009. Employer participated by Candice Fickenscher, human resources and safety manager, and Jim Escritt, outside operations manager. The record consists of the testimony of Candice Fickenscher and Jim Escritt.

ISSUE:

Whether the claimant voluntarily left employment for good cause attributable to the employer.

FINDINGS OF FACT:

The claimant was hired as a driver on October 21, 2008. She hauled her last load on November 26, 2008. She informed her employer that she needed to have eye surgery. The claimant was asked to provide documentation of her medical problems to the employer. Given requirements of the Department of Transportation, it was essential that the claimant be physically able to perform her job and to have a current CDL license. The claimant did not qualify for FMLA leave.

The employer waited for the claimant to provide the necessary documentation. By December 11, 2008, the claimant still had not provided the information to determine if she was physically capable of performing her job. As the claimant had missed more than three days of work and had not produced a doctor's note, her employment was ended.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The evidence in this case established that the claimant voluntarily quit her employment without good cause attributable to the employer. For a period from November 26, 2008—after she hauled her last load—until December 11, 2008 the claimant did not report for work as required. She claimed to have a medical problem that precluded her from driving but she failed to bring any documentation to the employer to show that she was unable to work. The claimant's failure to come to work evinces both her intent to sever her employment and an overt act that carries out that intention.

The representative disqualified the claimant for failure to follow instructions in the performance of her job in accordance with Iowa Code section 96.5-2. That disqualification is affirmed in this decision although the basis for the disqualification is a voluntary quit pursuant to Iowa Code section 96.5-1.

DECISION:

The decision of the representative dated April 28, 2009, reference 01, is modified without effect. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs