

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GAIL D. TERRY
Claimant

APPEAL NO. 10A-UI-14206-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE LEROY HANSON COMPANY
Employer

OC: 01/17/10
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated October 7, 2010, reference 06, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 29, 2010. The claimant participated. The employer participated by Jerry Steffen, owner. The record consists of the testimony of Gail Terry and the testimony of Jerry Steffen.

ISSUE:

Whether the claimant was separated from her employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is an embroidery company. The claimant was hired on May 17, 2010, as a part-time embroidery operator. The claimant's last day of work was September 15, 2010. She was terminated on September 16, 2010.

The events that led to the claimant's termination occurred on September 15, 2010. The claimant had been at work for approximately two hours when her supervisor, Jen, arrived. The claimant was inspecting and folding a large order of shirts that had been embroidered the evening before. The claimant noticed that some of the shirts had been cut. These shirts could not be sent to the customer. Due to lack of space, the claimant had to walk to another table in order to inspect and fold the shirts. When Jen arrived, she made a comment that it "sure seems like you're wasting a lot of time." This comment upset the claimant very much.

Jen had made other comments to the claimant over the past two weeks that also upset the claimant. Jen criticized the claimant in front of the other employees for taking too a long a break. The break had only been 13 minutes by the claimant's calculation. Jen also refused to allow the claimant to use a Sharpie pen that she had been using. When the claimant explained that she needed the pen, Jen told her to get her own.

After the comment made to her on September 15, 2010, the claimant was emotional. Paula, the office manager, took the claimant into Jerry Steffen's office. He told her to go home for the rest of the day. On September 16, 2010, he told the claimant that "it was not a good fit." The claimant did not quit her job. Mr. Steffen told the claimant not to return to work.

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 greater weight of the evidence in this case is that the claimant was terminated by her employer. Jerry Steffen felt that the claimant had gotten too emotional after her conversation with Jen earlier in the day. He decided that the claimant did not like her job and that she was not a good fit with his other employees. It is not entirely clear how he came to that conclusion, as he testified he only briefly spoke to Jen after sending the claimant home. A reasonable inference from the evidence is that he did not want any discord in the office and decided to terminate the claimant. The claimant did not voluntarily quit her job. The employer made the decision to sever the employment relationship.

Since there is no evidence of misconduct in this case on the claimant's part, the claimant's termination was for no disqualifying reason. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's decision dated October 7, 2010, reference 06, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw