IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ASHLEY M AUGUSTINE
Claimant

CHRISTIAN OPPORTUNITY CENTER
Employer

APPEAL NO. 12A-UI-07047-VST

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/13/12
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated June 4, 2012, reference 01, which held that the claimant was eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 9, 2012. Claimant participated. Brenda Conklin was a witness for the claimant. The employer participated by Angela DeKock, human resources director, and Laurie Wiele, program manager. The record consists of the testimony of Angela DeKock; the testimony of Laurie Wiele; the testimony of Ashley Augustine; the testimony of Brenda Conklin; and Claimant's Exhibits A-D.

ISSUE:

Whether the claimant was discharged for misconduct.

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 provides support services with dependent adults with disabilities. The claimant was hired on July 24, 2008, as a part-time living skills advisor. Her last day of work was April 23, 2012.

The claimant was scheduled to work on April 26, 2012. At approximately 9:15 p.m., the claimant was taken by ambulance to Methodist Hospital for evaluation. She was scheduled to be at work at 10:00 p.m. The claimant was hospitalized first at Methodist Hospital and then at Mary Greeley Hospital. The claimant did not have a phone available to her.

On April 30, 2012, the claimant's mother went to the employer to explain her daughter's situation. She asked for papers to file for a medical leave of absence. She did tell the employer that the claimant was in the hospital. The parties do not agree on whether Ms.Conklin told the employer that the claimant could not be at work on May 2, 2012, and May 3, 2012.

The claimant was released from the hospital on May 2, 2012. She did not go to work on May 2, 2012, and May 3, 2012. She was under the impression that her mother had told her employer that she would not be at work. The employer regarded the claimant as having had three instances of no call//no show. Under the employer's written policy, of which the claimant was aware, the claimant was considered to have voluntarily quit.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 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.

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.

There is insufficient evidence in this record to conclude that the claimant had three consecutive days of no call/no show and therefore voluntarily quit her job. The administrative law judge is mindful that this case appears to be highly charged emotionally and that the employer feels quite strongly that the claimant had an obligation to somehow get in touch with the employer on her status. The claimant did a poor job of communicating with her employer but she was dependent upon others to communicate messages to her employer and did not have control over what those messengers may have said. There appears to be family tensions as well. The claimant's failure to contact the employer on April 26, 2012, is understandable since she was being rushed to the hospital in an ambulance.

The other two absences are more difficult. Although the claimant had phone privileges, she could not make long distance calls from the hospital in Ames. No one bothered to give the employer her phone number. Had that been done, maybe this situation could have been avoided. The claimant believed that her mother had told her employer that she would not be able to work on May 2, 2012, and May 3, 2012. Ms. Conklin was not a credible witness but the administrative law judge believes that the claimant reasonably believed her mother would communicate with her employer.

When the circumstances of this case are examined in their entirety, the administrative law judge believes that the claimant did not intend to quit her job and intended to return to work when her recuperation was over. She reasonably believed her employer knew her situation and did not think she needed to call. Benefits are therefore allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated June 4, 2012, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs