

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLLE C MAY
Claimant

APPEAL NO. 11A-UI-14413-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KUM & GO LC
Employer

OC: 10/03/10
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Kum & Go LC filed a timely appeal from a representative's decision dated October 24, 2011, reference 02, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on November 15, 2011. The claimant participated personally. The employer participated by Ms. Teri Arreola, general manager.

ISSUE:

At issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Nicholle May was employed by Kum & Go LC from December 3, 2010, until September 21, 2011. Ms. May held the position of full-time sales manager and was paid by the hour. Her immediate supervisor was Ms. Teri Arreola.

Ms. May was separated from her employment with Kum & Go after she failed to report for scheduled work or provide required notification on September 18, 19, 20, and 21, 2011. The employer received no notification from Ms. May prior to the beginning of her work shift that she would be unable to report for work on those days. The general manager, Ms. Arreola, has a personal telephone and a cell phone. The claimant was aware of the numbers; however, Ms. Arreola did not receive a message from Ms. May indicating that she would not be reporting to work. On September 18, the claimant's mother called in after the beginning of her work shift to report the claimant's impending absence that day because the claimant's child was sick.

Ms. May was scheduled to work Tuesday, Wednesday, and Thursday of that week and the schedule had been posted well in advance. Ms. Arreola, the general manager, had not received any information from Ms. May to alert the employer that Ms. May would not be reporting for scheduled work.

In attempt to keep Ms. May employed, Ms. Arreola went to extra efforts of attempting to call and text the claimant; however, the messages were not responded to by the claimant. After the claimant had failed to report for scheduled work and had not provided required advance notification for three or more consecutive workdays, the employer reasonably concluded that Ms. May had relinquished her position with the company. After being informed of her separation from employment, Ms. May did not attempt to contact Ms. Arreola to provide any explanation as to why she had not reported to work on the days in question.

It is the claimant's position that she contacted the employer each day and/or that the employer should have known that the claimant was unable to work certain days.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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.

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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. The evidence in this case is disputed. The employer maintains that Ms. May did not provide the required advance notification each day between September 18 and September 21, 2011, to notify the employer of her impending absence as required by company policy. The employer testified with specificity as to what occurred each day, and extra efforts were taken by the company to contact the claimant in an effort to continue the employment relationship. In contrast, it is the claimant's position that she attempted to contact Ms. Arreola but was unable to get through and that other individuals were to contact the employer for her or that Ms. Arreola should have known that the claimant was unable to work on certain days because of other obligations. The administrative law judge notes that when informed she had been separated from employment, Ms. May did not attempt to reclaim her job by going to her employer to explain what, if any, notification had been provided each day. As previously noted, the employer went to extraordinary lengths to contact

the claimant in an effort to keep her as an employee and received no response from Ms. May. The administrative law judge thus finds the testimony of the employer's witness to be more credible.

The administrative law judge concludes, based upon the totality of the evidence in the record, that the claimant failed to provide adequate notification to her employer of her impending absence for three or more consecutive workdays in violation of company policy. The claimant thus left employment without good cause attributable to the employer and unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated October 24, 2011, reference 02, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant 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 the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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