

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACI M BEECHER
Claimant

APPEAL NO. 11A-UI-14979-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR SERVICES INC
Employer

**OC: 10/23/11
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated November 10, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on December 14, 2011. Claimant participated personally. The employer participated by Ms. Jennifer Foster, Human Resource Assistant Manager and Mr. Paul Overmann, Regional Vice President.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Traci Beecher was employed by Family Dollar Services, Inc. from September 13, 2010 until October 23, 2011 when the employer concluded the claimant had voluntarily relinquished her position with the company. Ms. Beecher worked as a full-time forklift operator and was paid by the hour.

The claimant's last day of work was October 9, 2011. Ms. Beecher had injured her wrist at work and had been treated by a company physician for her injury. Ms. Beecher was to have returned to work on October 7, 2011 for light duty work but instead called in sick. Claimant was having issues with prescriptions prescribed by her personal physician. Subsequently, Ms. Beecher's personal physician provided a medical summary indicating that the prescriptions that Ms. Beecher was taking made it unsafe for her to drive a forklift. Numerous efforts were made by the employer to determine Ms. Beecher's status and to have her return to work. Although unable to work and not released by her physician, Ms. Beecher filed a claim for unemployment insurance benefits with an effective date of October 23, 2011. The employer noted that the claimant filed a claim for unemployment benefits and because the employer believed that Ms. Beecher was not calling in daily as required, a letter was sent to the claimant on November 9, 2011 indicating the claimant had not called in on October 25, 26, or 27, 2011. The employer indicated to Ms. Beecher that it was considering the claimant's actions to have meant

that the claimant had voluntarily relinquished her position with the company. The claimant was given one final opportunity to contact the company within seven days but did not do so.

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 § 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 § 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 § 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 a good cause attributable to the employer. Iowa Code § 96.6(2). An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaints. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993).

The Supreme Court of the State of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) found that absence due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer. In this matter the employer was reasonable in its belief that the claimant had not kept the employer properly apprised on a day-by-day basis of her status and had not called in on October 25, 26, or 27, 2011. When the employer noted in addition to these facts that the claimant had filed a claim for unemployment insurance benefits, the employer concluded the claimant had relinquished her position with the company, however, to insure that there was no mistake, the company subsequently sent Ms. Beecher a letter on November 9, 2011 giving the claimant seven additional days to contact the employer if their conclusion that she had quit employment was mistaken. The claimant did not contact the employer.

For the above-stated reasons, the administrative law judge concludes that the claimant left employment voluntarily. 871 IAC 24.25(4) provides that an individual who is absent for three days without giving notice to the employer in violation of a company rule is presumed to have left employment without good cause attributable to the employer. As the claimant has not met

her burden of proof in establishing good cause attributable to the employer for leaving employment, benefits are denied.

The administrative law judge also notes that at the time of the hearing, Ms. Beecher continued to be under a doctor's care and has not been released to return to work. The administrative law judge concludes that there is a substantial question regarding the claimant's availability for work and her eligibility to receive unemployment insurance benefits because she is not able to work.

DECISION:

The representative's decision dated November 10, 2011, reference 01, is affirmed. Claimant voluntarily left employment without good cause attributable to the employer. 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 and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs