

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LETTY VIRAMONTES
Claimant

APPEAL NO. 17A-UI-01175-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CALERIS INC
Employer

OC: 01/18/17
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Job Abandonment (Failure to notify three days)

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the representative's decision dated January 27, 2017, reference 01, which denied unemployment insurance benefits, finding the claimant had left employment by failing to report or provide notification for three consecutive work days. After due notice was provided, a telephone hearing was held on February 22, 2017. Claimant participated. The employer participated by Ms. Stacey Springer, VP of Employee Development, and Ms. Angie Harlow, Director of Operations. Employer's Exhibits 1, 2, and 3 were admitted into the hearing record.

ISSUE:

The issue is whether the claimant left the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Letty Viramontes was employed by Caleris Inc. from August 8, 2016 until January 9, 2017, when she was separated from employment by failing to report for work for at least three consecutive work days without notifying the employer, in violation of the company's attendance policy. Ms. Viramontes was employed as a full-time customer service representative and was paid by the hour. Her immediate supervisor was Mr. Jordan Huffaker.

On January 4, 2017, Ms. Viramontes was informed that she was being sent home from work for the remainder of the work day to allow the employer to investigate a complaint that had been made by a client about the manner in which Ms. Viramontes had handled two telephone sales. Ms. Viramontes was instructed to report back to work the next day, January 5, 2017, at her usual reporting time of 2:00 p.m. That evening, the claimant was contacted by two fellow employees who stated their belief that the claimant was going to be discharged because some of her work had been distributed to other customer service representatives. The claimant was also called by a police officer, who appeared to be investigating the sales issue related to her suspension that day. The officer suggested that the claimant contact "Angela" to help resolve the issue before returning to work. The claimant sent a text message to her supervisor informing her of the call and the claimant's desire to meet with "Angela" prior to the meeting. Ms. Viramontes was advised twice by her supervisor that she should report for work the next

day and attend the meeting on the suspension issue. Based on the information the claimant had, she concluded that she would be discharged from employment and elected not to return to work. She also continued to be concerned about whether she had the opportunity to meet with "Angela".

Ms. Viramontes did not report for scheduled work on January 5, 6, or 9, 2017. On each day, the claimant was called by the employer and messages were left inquiring as to why the claimant was not reporting for work and requesting the claimant to call the employer. Ms. Viramontes did not respond to any of the calls and had no further contact with the company. On January 11, 2017, the claimant was sent a letter by the employer referring to the claimant's failure to report for work or provide notification as required by company policy, informing the claimant that her employment with the company had been terminated effective her last day worked.

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.

Iowa Admin. Code r. 871-24.25(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.

Iowa Admin. Code r. 871-24.25(29) 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:

(29) The claimant left in anticipation of a layoff in the near future; however, work was still available at the time claimant left the employment.

In this case, the claimant chose to abandon her job with Caleris Inc. because she anticipated that she would be discharged by the employer because a company client had complained and the company was investigating whether the claimant had intentionally provided purchase items to a caller without properly charging the caller for them.

The claimant was aware on January 4, 2017, that she was being suspended only for the remainder of that day and the employer expected her to report for work the following day, January 5, 2017, at her usual start time. Ms. Viramontes knew that under company policy that if she failed to report for work and did not provide notification to the employer for three or more consecutive work days, the employer would consider that she had abandoned her job with the company. The claimant had elected not to return to work and not to notify the employer for three or more consecutive work days and the reasons she was not reporting. It appears that the claimant's belief that she would be discharged was caused in part by two other hourly employees, but had not been substantiated by the company.

Further reasons were cited by the claimant, was her inability to speak with "Angela" (Ms. Angie Harlow, Director of Operations). The suggestion that she contact "Angela" was made by a police officer in reference to potential criminal charges and had no bearing on whether or not the claimant would continue to be employed by the company.

Although the claimant had requested a meeting with "Angela" and had not yet received one, she did not respond to messages left for her to call the company on January 5, 6 and 9, 2017. Ms. Viramontes also did not directly contact the company's human resource department during this time attempting to save her employment or to speak with "Angela", the person suggested to her on the issue of potential criminal charges.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are withheld.

DECISION:

The representative's decision dated January 27, 2017, reference 01, is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs