

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**LACEY J VANDELLO
2010 OAKWOOD RD #211
AMES IA 50014**

**VERMEER MANUFACTURING COMPANY
INC
PO BOX 200
PELLA IA 50219-0200**

**Appeal Number: 06A-UI-02410-JTT
OC: 01/29/06 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Claimant Lacey Vandello filed a timely appeal from the February 17, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 20, 2006. Claimant participated. Human Resources Manager Charlene Cufu represented the employer and presented additional testimony through Area Manager Doug Gillam. Exhibits A through D were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lacey Vandello was employed by Vermeer Manufacturing Company as a full-time material handler from March 28, 2005 until January 31, 2006, when she quit. Ms. Vandello's regular hours of employment were 10:00 a.m. to 8:30 p.m. Ms. Vandello's immediate supervisor was Area Manager Doug Gillam.

Ms. Vandello last appeared and worked a shift on January 26, 2006. During the shift, Ms. Vandello's fiancé called the employer to notify Ms. Vandello that her mother had been injured in a car accident. The employer immediately passed the message along to Ms. Vandello, who telephoned her fiancé and learned the details. Ms. Vandello then left her shift early with the approval of the employer. Because of prior attendance issues, Human Resources Manager Charlene Cufu told Ms. Vandello that her absence for the remainder of January 26 would be approved, but that Ms. Vandello would need to return to work on January 27. On January 27, Ms. Vandello notified the employer prior to the scheduled start of her shift that she would be absent due to the need to be with her mother.

The employer's attendance policy required Ms. Vandello to notify the employer no later than 30 minutes after the scheduled start of her shift if she needed to be absent. The employer has a policy that deems two consecutive absences without notifying the employer a voluntary quit. These policies are set forth in the employee handbook. The employer reviewed the policies with Ms. Vandello at the time of her orientation. Ms. Vandello received a copy of the employee handbook on March 28, 2005. Ms. Vandello requested a second copy of the employee handbook, which the employer provided to her on August 17, 2005. Ms. Vandello was familiar with the employer's attendance policy.

At 4:49 a.m. on Monday, January 30, Ms. Vandello left a voice mail message for Mr. Gillam, in which she advised that she was heading to a hospital in Des Moines to be with her mother, who was heavily medicated. In the afternoon, Ms. Vandello telephoned Ms. Cufu and asked what would happen to her, given that she did not return to work as directed. Ms. Cufu told Ms. Vandello that the only thing that would happen to Ms. Vandello is that she would receive a written warning for absences not excused by the employer. Ms. Cufu told Ms. Vandello that the employer would consider Ms. Vandello's absences on January 27 and 30 unexcused absences. Ms. Vandello indicated she did not think this was fair and ended the conversation.

At 11:41 a.m. on January 31, Ms. Vandello left a voicemail message for Mr. Gillam. Ms. Vandello indicated that she had been attempting to reach Mr. Gillam since 10:00 a.m. Ms. Vandello indicated that she was not going to sign a written reprimand. Ms. Vandello said she guessed she was fired based on her refusal to sign a written warning. Ms. Vandello requested that the employer clean out her locker and leave her effects where she could pick them up. Ms. Vandello indicated that if Mr. Gillam had any questions, he could call her. However, Ms. Vandello turned her telephone off while she was at the hospital.

At 12:01 p.m. on January 31, Ms. Vandello left a message on Ms. Cufu's voicemail. Ms. Vandello indicated she had left a message in Mr. Gillam's voice mailbox. Ms. Vandello indicated that she knew her rights and was not going to sign a written warning. Ms. Vandello indicated that she wanted the employer to collect her personal effects and take them to the front of the production plant so that she could collect them. Ms. Vandello indicated that if Mr. Cufu had any questions, she could call her. Again, Ms. Vandello turned her telephone off while she was in the hospital.

At 12:45 p.m. on January 31, Ms. Vandello called and spoke with Mr. Gillam. Ms. Vandello asked Mr. Gillam whether the employer had cleaned out her locker. Mr. Gillam indicated that the employer had not and, at the time, would not. Mr. Gillam asked Ms. Vandello whether she was quitting her job because the employer had not discharged her. Ms. Vandello would not give Mr. Gillam an answer. Ms. Vandello repeated that the employer should notify her when her locker was cleaned out so she could get her lunchbox and that her lunchbox contained her watch and a necklace she wore to work that day.

Ms. Vandello did not make further contact with the employer. On February 2, Ms. Cufu sent a letter to Ms. Vandello along with Ms. Vandello's personal effects. Ms. Cufu indicated that the employer deemed Ms. Vandello to have voluntarily quit the employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the administrative law judge concludes that Ms. Vandello voluntarily quit the employment and was not discharged by the employer. The remaining question is whether the evidence in the record indicates that Ms. Vandello's voluntary quit was for good cause attributable to the employer. For the reasons set forth below, the administrative law judge concludes it was not.

All terminations of employment are generally classifiable as layoffs, quits, discharges, or "other separations." See 871 IAC 24.1(113). A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces. See 871 IAC 24.1(113). A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, and not passing the probationary period. See 87 IAC 24.1(113).

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 weight of evidence in the record establishes that Ms. Vandello voluntarily quit and was not discharged. Ms. Vandello's assertion that Mr. Gillam discharged her during a telephone call on January 30 is inconsistent with the weight of the evidence and the administrative law judge finds the assertion not credible. The weight of the evidence indicates that Ms. Vandello had formed an intent to quit the employment at the time she left her messages for Mr. Gillam and Ms. Cufu on January 31, directing them to collect her personal effects and take them to the front of the plant. The evidence further indicates that Mr. Gillam had specifically advised Ms. Vandello that the employer was not discharging her. Ms. Vandello's refusal to provide Mr. Gillam with an answer as to whether she was quitting the employment suggests an attempt on the part of Ms. Vandello to manipulate the separation to make it appear as if she had been discharged when she had not. Ms. Vandello further communicated her intent to sever the employment relationship by failing to report to work on January 31, February 1 and February 2. The evidence indicates that Ms. Vandello quit in response to a pending reprimand. Such quits are presumed to be without good cause attributable to the employer. See 871 IAC 24.25(28).

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.

The evidence in the record indicates that Ms. Vandello voluntarily quit the employment without good cause incredible to the employer. Ms. Vandello is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Vandello.

DECISION:

The Agency representative's decision dated February 17, 2006, reference 01, is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

jt/kkf