

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**PAMELA J MARTINEZ**  
Claimant

**WINEGARD COMPANY**  
Employer

**APPEAL NO. 18A-UI-08266-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/24/17**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated July 26, 2018, reference 05, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 24, 2018. Claimant participated and had witness Tina Musgrove. Employer participated by Kerry Hale. Employer's Exhibits 1-3 were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant quit for good cause attributable to employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on July 3, 2018. Claimant voluntarily quit her job by being a no-call/no-show for work on July 5, 9, and 10, 2018.

Claimant worked as a machine operator for employer. Sometime in May, claimant was operating a co-worker's machine while that person was on break. During the time claimant operated the machine, a hose broke and water was spraying all over when the co-worker came back to the machine. The co-worker stated in his frustration that "he'd bash the person's head in with a hammer" if he found out who broke his machine.

Claimant and her supervisor heard this remark, and the supervisor went to the plant manager. The plant manager had a meeting whereby the co-worker was warned that any additional statements or actions of this type could lead to his termination.

Over the next month to month and a half, the co-worker hadn't made any threats to claimant, but claimant was still uncomfortable to be around him. Claimant's supervisor took steps to keep claimant and the co-worker separated. Over the Fourth of July, claimant's supervisor was to be out of town. Claimant had great nervousness that the co-worker might do something to her. Claimant did not call or show for work on July 5, 9, or 10 – her three next scheduled days. Claimant stated that she'd been previously warned that she was close to termination for

absenteeism, according to the company's attendance policy. When claimant didn't call or show for work on July 5, 2018, she believed that she would then be terminated. For that reason, she didn't call or show for work on July 9 or 10, 2018.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because she was afraid that her co-worker might do something to her. Claimant also decided that after she missed the first day, she would be terminated, so she didn't bother to come or call for work any after that date.

Ordinarily "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code Section 96.2. *O'Brien v. EAB* 494 N.W.2d 660, 662 (Iowa 1993) (citing *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the test of good faith." *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). "Common sense and prudence must be exercised in evaluating all of the circumstances that led to an employee's quit in order to attribute the cause for the termination." *Id.* In this matter, claimant knew that she sat one half point away from being terminated as a result of absenteeism. There were no inappropriate actions from the co-worker to the claimant since the co-worker received a warning. Claimant was concerned about what might happen when her supervisor was gone. Yet claimant did nothing to make her concerns known to employer such that employer might address those concerns. Claimant also didn't call employer to tell why she was staying off of work. Claimant didn't return a call from employer received on the second day of her absence. As a result of these actions and non-actions on the part of claimant, employer was unable to address any of claimant's concerns, or in the alternative, approve of claimant's explanation for her absence. This does not constitute 'good cause' attributable to employer for claimant's quit. Benefits are denied.

**DECISION:**

The decision of the representative dated July 26, 2018, reference 05, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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