

**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**

**TAMMY J PLUMLEY
4212 LAFAYETTE
EVANSDALE IA 50707**

**COVENANT MEDICAL CENTER
C/O PERSONNEL –
EMPLOYMENT COORDINATOR
3421 W 9TH ST
WATERLOO IA 50702**

**Appeal Number: 04O-UI-13419-DT
OC: 09/05/04 R: 03
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 Leaving
871 IAC 24.22(2)j – Leave of Absence

STATEMENT OF THE CASE:

Tammy J. Plumley (claimant) appealed a representative's September 30, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Covenant Medical Center (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 11, 2005. The claimant participated in the hearing. Karen Swinton appeared on the employer's behalf and presented testimony from two other witnesses, Jim Shinstine and Nancy Kjarum. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on March 2, 1998. She worked part time (average 28 hours per week) as a patient care assistant in the employer's hospital. Her last day of work was August 18, 2004.

The claimant had been having some personal problems regarding her marriage and the terminal illness of her grandfather. She and the employer mutually agreed that the claimant should go on a leave of absence from July 27 through August 21, 2004. The claimant contacted her supervisor, Mr. Shinstine, prior to August 11 and indicated that she was ready to return from the leave of absence; she was permitted to return to work on August 11, 2004. The claimant worked through August 18, 2004, but missed some scheduled work. The claimant had previously been given warnings for attendance including no-call/no-shows, most recently on July 16, 2004. As a result, Mr. Shinstine spoke by phone with the claimant and suggested that the claimant was not really ready to return from the leave of absence. The claimant agreed that she should return to leave of absence status, to end September 3, 2004.

On September 1, 2004, the claimant attempted to contact Mr. Shinstine to report she was ready to return to work. He was not on duty at that time, so the claimant spoke with Ms. Kjarum, the director of medical and surgical services. The claimant told Ms. Kjarum that she was ready to return to work. Ms. Kjarum told the claimant that was fine, and that if she was not sure of her schedule, that she should call the staffing office. The claimant responded that she already knew she was scheduled to work on September 6.

The claimant was scheduled to work both September 6 and September 7. She was a no-call/no-show for both shifts. After the September 6 no-call/no-show, on September 7 Mr. Shinstine attempted to contact the claimant by phone but was failed to reach her, although he left a message. On September 8, after Mr. Shinstine learned of the claimant's no-call/no-show on September 7, he again attempted unsuccessfully to call the claimant. He then issued a letter informing the claimant her employment was ended due to her failure to return to work.

The claimant asserted that she had not indicated to Ms. Kjarum that she knew she was scheduled to work on September 6, but rather that Ms. Kjarum had told the claimant to wait until after she spoke to Mr. Shinstine. She stated that she had contacted the staffing office before talking to Ms. Kjarum and had been told directly by one staffer and indirectly by two other staffers that she was not on the schedule. She further claimed that she had called and left a message for Mr. Shinstine on September 3 for him to call her, and that she had called again on September 7, at which time he told her she was discharged. The administrative law judge finds the testimony of the employer's witnesses more credible; in order to accept the claimant's testimony, the administrative law judge would have to conclude that both Ms. Kjarum was lying or extremely mistaken about what she heard the claimant say on September 1 and that Mr. Shinstine was lying or extraordinarily mistaken in his testimony that he had no message from the claimant on September 3, that he had not left a message for the claimant on September 7, and that he had not spoken to the claimant since prior to September 1. The claimant provided no independent evidence corroborating her version of events.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for 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 24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

By failing to return to work after the end of her leave of absence, the claimant did effectively abandon her position. The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code Section 96.6-2. The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's September 30, 2004 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of September 5, 2004, benefits are withheld until such time as 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.

ld/b