

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBIN L ROZENBOOM
Claimant

APPEAL NO. 11A-UI-01272-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLYING J INC
Employer

**OC: 12/26/10
Claimant: Appellant (1)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Robin Rozenboom (claimant) appealed a representative's January 26, 2011 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Flying J (employer) for excessive unexcused absenteeism. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 3, 2011. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 26, 2009, as a full-time relief manager. The claimant took four days off when her grandmother passed away in December 2010. She was incarcerated from December 14 through 21, 2010. On December 21, 2010, the employer separated the claimant from employment.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds the claimant voluntarily quit work 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(16) 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:

(16) The claimant is deemed to have left if such claimant becomes incarcerated.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her actions. She stopped appearing for work. When an employee stops appearing for work because she is incarcerated, her leaving is without good cause attributable to the employer. The claimant stopped appearing for work because she was incarcerated. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's January 26, 2011 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs