

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEGHAN L TIMMERMAN
Claimant

APPEAL NO. 09A-UI-11882-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PETCO ANIMAL SUPPLIES INC
Employer

**Original Claim: 07/12/09
Claimant: Respondent (2/R)**

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Petco Animal Supplies, Inc. (employer) appealed a representative's August 7, 2009 decision (reference 01) that concluded Meghan L. Timmerman (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 2, 2009. The claimant participated in the hearing. Mark Henderson appeared on the employer's behalf. 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 4, 2007 in the employer's Dubuque, Iowa store. After a transfer at her initiation, as of about February 1, 2009 she worked full-time as companion animal specialist at the employer's Davenport, Iowa store. In about mid June 2009 she tendered her resignation; she indicated that her last day would have been July 15, 2009. She gave her notice because she had decided she was either going to move back to Dubuque or was going to move to California. After moving, she intended on reapplying for reemployment with the employer at a local store.

On July 1, 2009, the employer discharged the claimant. The stated basis for the discharge was her attendance. The employer's attendance policy provides for discharge at 11 points. As of April 28, the claimant had ten points; she had received a number of warnings on the issue. Her points included several instances of tardiness, as well as two instances of no-call, no-show assessed as three points. For one of those instances, the claimant did call late to report she would be absent due to issues related to her mother being in the hospital.

The final absence was on June 30, 2009. The claimant had worked a shift on June 28. She had checked the schedule and seen she was not scheduled again until July 3. However, on July 1 a coworker called her and told her that it looked like she had been put on the schedule for June 30, and that she was now crossed off the schedule for the rest of the time covered on the calendar. The claimant called Mr. Henderson, the market manager, to confirm if she was discharged, and he agreed that she was due to her attendance.

The claimant established an unemployment insurance benefit year effective July 12, 2009.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

871 IAC 24.25 provides that, 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 claimant did express her intent not to continue to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code §96.6-2. Quitting in order to move to another locality and seek reemployment in the new locality is not good cause attributable to the employer. 871 IAC 24.25(2), (3). The claimant has not satisfied her burden. Benefits are denied effective July 12, 2009, as the quit would have been in effect for the majority of that benefit week.

If there had been some period of time between the discharge and the effective date of the intended quit for which the claimant was seeking benefits, the next issue in this case would be whether, for the time prior to the effective date of the claimant's quit the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. However, in this case the issue is moot, as the claimant did not establish a claim for benefits until the week in which her quit would have become effective.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining

the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's August 7, 2009 decision (reference 01) is reversed. The claimant voluntarily quit without good cause attributable to the employer effective the week beginning July 12, 2009. Even if the employer's discharge of the claimant prior to the effective date of the quit was not for disqualifying reasons, as of July 12, 2009, 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. The employer is not chargeable for any benefits after July 12, 2009.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw