

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

LAURIE A GILVREY
PO BOX 214
GRANGER IA 50109

CENTER FOR LONG TERM CARE OF IA
7610 STEMMONS FRWY N STE 500
DALLAS TX 75247

Appeal Number: 05A-UI-02030-BT
OC: 01/16/05 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
Section 96 5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Laurie McGilvrey (claimant) appealed an unemployment insurance decision dated February 17, 2005, reference 01, which held that she was eligible for benefits from the date of discharge to the effective date of resignation with the Center for Long Term Care of Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 14, 2005. The claimant participated in the hearing. The employer participated through Karen Younts, Director of Nursing.

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 employed as a full-time licensed practical nurse/charge nurse on July 10, 2004 and worked through January 22, 2005, when she was discharged after providing her resignation. The claimant wanted to go home because she was not feeling well and the employer would not let her go, so the claimant gave her two weeks' notice. The employer told the claimant she could leave at that time and did not have to work her last two weeks.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

Rule 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. An employee quits her job when she intends to quit and carries out that intent by some overt act. Peck v. Employment Appeal Bd., 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). The claimant voluntarily quit on January 22, 2005 by turning in her resignation with an effective date of February 5, 2005. She quit her employment because she was angry with the employer. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not satisfied that burden.

However, when an individual is discharged prior to an effective date of resignation, benefits are allowed from the last day worked until the effective date of the resignation, unless the claimant was discharged for work-connected misconduct. 871 IAC 24.25(38). The claimant was discharged two weeks prior to her resignation date. Her separation at that time was not due to any misconduct on her part, the employer simply chose not to allow the claimant to work the last two weeks. Consequently, the claimant is allowed benefits for a two-week period ending February 5, 2005 and is disqualified after that date.

DECISION:

The unemployment insurance decision dated February 17, 2005, reference 01, is affirmed. The claimant is allowed benefits for the two-week period ending February 5, 2005 but is disqualified as of February 12, 2005.

sdb/pjs