

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

REA R GONZALEZ  
1310 FLORENCE AVE  
SIOUX CITY IA 51109

ADVANCE SERVICES INC  
c/o TALX UCM SERVICES INC  
PO BOX 66864  
ST LOUIS MO 63166 6864

Appeal Number: 04A-UI-12088-DWT  
OC: 10/10/04 R: 01  
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, 4<sup>th</sup> 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 are 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Rea R. Gonzalez (claimant) appealed a representative's November 4, 2004 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Advance Services, Inc. (employer) would not be charged because she had voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 6, 2004. The claimant participated in the hearing. Roxanne Beckaert, an attorney, represented the employer. Molly Sherriel, a human resource coordinator, and April Setterman, the manager, testified 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:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 20, 2004. After the claimant had worked as a temporary employee for some of the employer's clients, the employer hired the claimant to work as a full-time human resource coordinator to assist the employer's Spanish-speaking clients. The claimant worked as scheduled on October 8.

On October 11, the employer received a recorded message from the claimant that her mother-in-law had been involved in an accident the day before and she had to go to Denison, Iowa, to be with her. On October 15, the claimant's sister went to the employer's workplace to pick up the claimant's check. The employer did not have the claimant's check ready because the employer did not know how many hours the claimant had worked the previous week. The claimant's sister had a written note from the claimant giving her permission to pick up the claimant's check. The claimant's sister also gave the employer the claimant's key for the office. In the note, the claimant asked Setterman to call the claimant to let her know if she had a job because the claimant was still out of town. Setterman called the claimant's phone number, but no one answered. The claimant did not have an answering machine.

The next time the claimant called the employer was October 19, 2004. During the call on October 19, the claimant reported the number of hours she had work during the week of October 4. The claimant also told Setterman she was still out of town and did not know when she would be able to return. On October 19 when the claimant still did not know when she was returning to work, the employer decided to replace her. The employer hired a replacement on October 20, 2004.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The facts establish the claimant voluntarily quit her employment. The claimant knew her job was in jeopardy because in an October 15 note she asked the employer if she still had a job. The claimant's failure to keep the employer advised of when she would return to work and the facts she had not yet returned to Sioux City by October 19 support the conclusion that claimant quit her employment. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.6-2.

The evidence establishes the claimant was not back in town on October 19 when she talked to Setterman. Although the claimant asserted she was back in town by October 13, the evidence does not support this assertion. First, in the October 15 note the claimant tells the employer she is not in town. If the claimant were in town on October 13, the claimant's reasons for not going back to work on October 14 are flimsy. The facts indicate the claimant's testimony is not credible. As a result, the employer's version is stated in the findings of fact.

The claimant may have had compelling reasons for failing to return to work after October 8. Her reasons do not, however, qualify her to receive unemployment insurance benefits. As of

October 19, the employer had not discharged or even replaced the claimant. The claimant's assumption that the employer discharged her is not reasonable under the facts of this case. Next, while it is understandable that immediately after the accident, the claimant went to see her mother-in-law, the facts do not establish any necessity for the claimant to remain in Denison for over a week. Finally, even as of October 19, the claimant had not decided when she would return to work. The claimant did not ask the employer for a leave of absence and there is no evidence that the claimant had to be with her mother-in-law for medical reasons. The claimant is not qualified to receive unemployment insurance benefits as of October 10, 2004.

**DECISION:**

The representative's November 4, 2004 decision (reference 02) is affirmed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of October 10, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/pjs