

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OMARA YOST
Claimant

APPEAL NO. 12A-UI-10225-W

**ADMINISTRATIVE LAW JUDGE
DECISION**

THOMAS L CARDELLA & ASSOCIATES
Employer

OC: 07/08/12
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 13, 2012, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held in Cedar Rapids on November 26, 2012. Employer participated by Steve Brown. Claimant failed to respond to the hearing notice and did not participate.

ISSUES:

The issues in this matter are whether the claimant quit for good cause attributable to the employer or whether she was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer in early 2012. She was a full-time sales representative hired December 4, 2010. She was placed on a leave of absence for a medical leave of absence in March 2012. The employer granted the leave through July 31, 2012. The claimant failed to return to work at the completion of her leave despite efforts by the employer to communicate with her.

REASONING AND CONCLUSIONS OF LAW:

The first issue is the nature of the claimant's separation. Separations are categorized into four separate categories under Iowa law.

24.1(113) Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of

labor-saving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

See Iowa Administrative Code 871—24.1.

It is the employer's burden to prove the nature of the separation. In this case, the nature of the separation can be discerned by reviewing the circumstances surrounding her leave of absence.

Iowa has adopted a very specific rule relating to leave of absence. 871 Iowa Administrative Code section 24.22(2), states:

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 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 become unemployed the individual is considered having voluntarily quit and is therefore 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.

Iowa Administrative Code 871—24.22(2)(j).

In this case, the claimant failed to return to work at the end of a leave of absence. Based upon the evidence in the record, the employer made reasonable efforts to communicate with the claimant to determine her status. Her leave ended officially on July 31, 2012 and the employer separated her at that time. Based upon the application of the facts to the law set forth above this separation must be analyzed as a “voluntary quit” by operation of law.

Since this matter is analyzed as a “quit” the burden is on the claimant to demonstrate that the quit is with “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.

The claimant's failure to participate renders it virtually impossible to meet her burden of proof. There is simply no evidence in the record which supports the conclusion that she quit with good cause attributable to the employer.

DECISION:

The decision of the representative dated August 13, 2012, reference 01, is affirmed. Unemployment insurance benefits are withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/css