

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNA L HYSKA**  
Claimant

**APPEAL NO. 11A-UI-15736-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IBM CORPORATION**  
Employer

**OC: 11/06/11  
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated December 8, 2011, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on January 10, 2012. The claimant participated. Although duly notified, the employer did not participate.

**ISSUE:**

At issue is whether the claimant left employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Jenna Hyska was employed by IBM Corporation from November 15, 2010, until November 4, 2011, when she voluntarily left her employment in anticipation that she would be discharged. Ms. Hyska was employed as a full-time help desk manager and was paid by salary. Her immediate supervisor was Ann Meyer.

On or about September 30, 2011, the claimant's immediate supervisor, Ms. Meyer, met with the claimant to warn the claimant that her employment was in jeopardy. The employer was dissatisfied, as Ms. Hyska had called in on a number of occasions absent due to anxiety attacks. It appears that although the claimant's work was satisfactory, the employer believed that the claimant could improve her performance and desired Ms. Hyska to be at work more regularly.

The possibility of being discharged in the future caused the claimant to suffer an additional anxiety attack and to seek the services of her physician and a therapist. Ms. Hyska was granted a medical leave of absence by the company. Upon returning from the approved leave of absence on November 3, 2011, Ms. Hyska was fully released by her physician to return. The claimant's physician, however, left the decision as to whether to continue in employment up to Ms. Hyska.

Although the claimant had not been advised to leave her employment by her physician, Ms. Hyska made a personal decision to leave her employment with IBM Corporation, concluding that she might be discharged in the future.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without 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.

871 IAC 24.25(22) 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 section 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 section 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:

(22) The claimant left because of a personality conflict with the supervisor.

871 IAC 24.25(33) 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 section 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 section 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:

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. See Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993).

In this matter, the evidence establishes that Ms. Hyska was counseled by her immediate supervisor on or about September 30, 2011, regarding excessive absenteeism. The employer stated to the claimant the possibility that the claimant might be discharged in the future. No date was set for the claimant's discharge. The statement made to Ms. Hyska was made apparently in the context of warning her to improve her attendance and/or work.

Although the statement by the claimant's supervisor caused the claimant to have an anxiety attack and to be off work for a substantial period of time, the claimant was fully released to return to work by her physician on November 3, 2011. The claimant elected at that time to resign her position with the company, as she anticipated that she might be discharged at some future, uncertain date. The claimant's intention in quitting was to protect her employment history.

While Ms. Hyska's reasons for leaving were undoubtedly good-cause reasons from her personal viewpoint, they were not good-cause reasons attributable to the employer. Employers routinely warn or counsel employees about areas of their performance or attendance that are not satisfactory and indicate to employees the possibility of discharge in the future if the employer's expectations are not met or if improvement is not shown. The claimant's physician did not advise her to quit but left that decision to the claimant. The claimant chose to resign her position rather than staying and attempting to improve her attendance and/or performance. Benefits are withheld.

**DECISION:**

The representative's decision dated December 8, 2011, reference 01, is affirmed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until 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.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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