

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN A SMART
Claimant

APPEAL NO. 10A-UI-01189-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

**APAC CUSTOMER SERVICES
OF IOWA LLC**
Employer

**Original Claim: 12/23/09
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated January 11, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 6, 2010, in Davenport, Iowa. The claimant participated. The employer participated by Seth Taylor, team leader, and Turkessa Newsone, human resources generalist. The record consists of the testimony of Karen Smart; the testimony of Turkessa Newsone; the testimony of Seth Taylor; and Employer's Exhibits A through D.

ISSUE:

Whether the claimant's separation from employment was for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a customer service representative for the employer. She handled in-bound calls. She was a full-time employee and was hired on May 15, 2006.

On October 2, 2009, the claimant left work early and went to the emergency room. She was diagnosed with the H1N1 flu and taken off work. The claimant had limited Family Medical Leave (FMLA) available to her since she had been on intermittent FMLA leave for other medical problems. The claimant was initially released to return to work on November 2, 2009. She did not return, saying she still was not feeling well. A second physician's release was given for November 16, 2009. The claimant did not return then, either. The claimant said she was over the flu, but had other medical problems for which she had been previously granted FMLA leave. None of her medical conditions were work-related.

Although the claimant had exhausted her FMLA leave, the employer gave her an additional 55 hours, which took her up to December 18, 2009. The claimant still could not return to work. The claimant and Ms. Newsone discussed her options and the claimant elected to resign her position. The general manager, however, wanted to give the claimant some additional time and so she

attempted to contact the claimant from December 18, 2009 with no success. When the claimant still had not contacted the employer by December 30, 2009, the employer processed the resignation.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be decided in this case is the nature of the separation of employment. The employer's position is that the claimant elected to resign due to health reasons, whereas the claimant states that she was terminated by the employer. The claimant had a chronic health problem with kidney stones and migraine headaches that had led to her being granted intermittent FMLA leave by the employer. She had made use of that FMLA leave prior to getting the flu on or about October 2, 2009. The claimant was released to return to work on November 16, 2009, after she had recovered from the flu. She did not return, however, due to her other health problems. The employer granted her another 55 hours of FMLA leave and she still was not able to return to work on December 18, 2009.

The claimant and Ms. Newsone discussed her options concerning her job. Ms. Newsone credibly testified that the claimant elected to resign her position so that she could more fully recover and regain her health. This resignation occurred on December 18, 2009. Even after the claimant elected to resign, the employer decided to try to work with her further and give her more time. The general manager tried to contact the claimant between December 18, 2009, and December 30, 2009, to discuss the matter further. The claimant never responded to these overtures from the employer. This fact is strong evidence that the claimant indeed had resigned her position and was not terminated by the employer.

After carefully reviewing all of the evidence and weighing the testimony of the witnesses, the administrative law judge concludes that the claimant elected to resign her position and was not terminated by the employer. The claimant may have had compelling personal reasons not to return to work, but those reasons are not good cause attributable to the employer. Accordingly, benefits are denied.

DECISION:

The representative's decision dated January 11, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be 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.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw