

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ERICA L NEUENKIRK**  
Claimant

**CG ACQUISITION CO**  
Employer

**APPEAL 15A-UI-11155-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/02/15**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 28, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 20, 2015. Claimant participated. Employer participated through human resources manager, Joan Johnson.

**ISSUE:**

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a shipping/receiving from June 7, 2010, and was separated from employment on September 11, 2015, when she quit.

The employer has an attendance policy which applies point values to attendance infractions, including absences and tardies. The policy also provides that an employee will be warned as points are accumulated, and will be discharged upon receiving ten points. Also included in the policy is that three consecutive days of no-call/no-show is considered a quit. If an employee is going to be absent, they are supposed to call in to the employer and leave a message prior to the start of their shift. Claimant was aware of the policy.

The claimant failed to report for work or notify the employer of her absences for three consecutive scheduled workdays on September 9, 10, and 11, 2015 in violation of the employer's policy. Prior to September 9, 2015, claimant used vacation days for August 28, 2015 and August 31, 2015. Claimant then called in absent on September 1, 2, 3, 4, and 8, 2015, because she did not have daycare on those days. Claimant did not request any further vacation after August 31, 2015.

On August 24, 2015, claimant had requested to change her schedule or switch to third shift. Prior to August 28, 2015, Ms. Johnson informed claimant there were no open positions on third shift and they could not change her schedule.

### **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. Benefits are denied.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(4) 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 § 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 § 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Claimant called into work on September 1, 2, 3, 4, and 8, 2015 and reported that she would not be at work because she did not have daycare. Claimant failed to contact the employer after September 8, 2015. The claimant failed to report for work or notify the employer of her absences for three consecutive scheduled workdays on September 9, 10, and 11, 2015 in violation of the employer's policy. Claimant was aware of this policy. No one with the authority to discharge claimant from the employer contacted claimant and told her she was discharged. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are withheld.

Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. Even though claimant's

co-worker told her she was discharged, this co-worker was just a peer and did not have the authority to discharge claimant. Since claimant did not follow up with management personnel or the owner, and her assumption of having been fired was erroneous, her failure to continue reporting to work was an abandonment of the job. Benefits are denied.

**DECISION:**

The September 28, 2015, (reference 01), decision is affirmed. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until such time as she 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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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

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