

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA HEALEY
Claimant

APPEAL NO: 12A-UI-01713-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAC INC
Employer

OC: 12/18/11
Claimant: Appellant (1)

Iowa Code § 96.5-1 - Voluntary Quit
871 IAC 24.25(4) - Voluntary Quit Without Good Cause

STATEMENT OF THE CASE:

Angela Healey (claimant) appealed an unemployment insurance decision dated February 9, 2012, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with DAC, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 27, 2012. The claimant participated in the hearing. The employer participated through Kelly Schubert, Human Resources Manager. Employer's Exhibit One and Claimant's Exhibit A were admitted into evidence. 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:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time supported living specialist from June 28, 2010 through December 8, 2011. She worked on November 11, 2011 and called Supervisor Tiffany Higgins on November 13, 2011 to report her absence on November 14, 2011. The claimant said she was going to the hospital in Iowa City, Iowa on the following day and Ms. Higgins advised her to keep them updated. When she was a no-call/no-show on November 15, 2011, Ms. Higgins and Human Resources Director Kelly Schubert called her but could only leave messages. The claimant did not return to work and made no contact until November 23, 2011 when she called in and left a message for the employer.

The employer returned the call to the claimant on November 28, 2011 after the holiday weekend. A meeting was scheduled and held on November 30, 2011. In addition to the unreported absences, there were some other issues that the employer had been waiting to discuss and the claimant was placed on a Final Notice of Employment.

The claimant was questioned about her absences and provided a doctor's excuse for November 14, 15 and 16, 2011. She was admitted to the hospital on November 14, 2011 and released from the hospital on November 16, 2011. The claimant's mother drove her home from Iowa City to Dubuque on November 16, 2011 and took care of her daughter after that. The claimant said she was too sick to report her absences. The claimant was released to return to work on November 17, 2011 and she was next scheduled for work after that on November 18, 21, 22 and 23, 2011.

The employer gave the claimant some time to provide documentation for her absences. Ms. Schubert advised the claimant she could even use prescriptions to verify her illness. The claimant contacted the employer on December 5, 2011 and reported she was not able to get the doctor to write her an excuse because she was not under his care from November 17, 2011 through November 23, 2011. She also stated she could not provide any prescriptions verifying her illness because she used a prescription medication that had been previously filled. The claimant was advised on December 8, 2011 that she was considered to have voluntarily quit in violation of the employer's three day no-call/no-show attendance policy.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, 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. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by failing to call the employer or report to work after November 14, 2011.

871 IAC 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.

The claimant was deemed a voluntary quit on November 23, 2011 after three days of no-call/no-show. It is her burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant failed to establish that she quit with good cause attributable to the employer. Benefits are therefore denied.

It should be noted that even if the separation was considered to be a discharge, the outcome would be the same. Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant's absences may have been due to illness but they were not reported until after the fact and would therefore constitute work-connected misconduct as defined by the unemployment insurance law.

DECISION:

The unemployment insurance decision dated February 9, 2012, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs