

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA LOPEZ BONILLA
Claimant

APPEAL NO: 09A-UI-10465-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 06/21/09

Claimant: Appellant (4)

Section 96.5-1-c – Voluntary Leaving/Care of Ill or Injured Family Member

STATEMENT OF THE CASE:

Maria Lopez-Bonilla (claimant) appealed a representative's July 17, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Cargill Meat Solutions Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 10, 2009. The claimant participated in the hearing. Rachel Watkinson appeared on the employer's behalf. Ike Rocha served as interpreter. During the hearing, Claimant's Exhibits A and B were entered 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:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on December 20, 2004. She worked full time as a production employee in the bacon division of the employer's Ottumwa, Iowa pork processing facility. Her last day of work was December 5, 2008. She had been approved for a two-week vacation through about December 22, 2008, so she could return to El Salvador to care for her mother who was in the hospital with a cardiac condition. However, her mother had continuing complications, so the claimant was unable to return as expected; she attempted to call back to the employer to inform the employer of her situation, but was unable to make telephone connections. When the claimant did not return from her vacation and was a three-day no-call, no-show in violation of company rule, as of about December 29 the employer considered the claimant to have voluntarily quit by job abandonment.

The claimant's mother was not released from doctor's care until March 2009. In the interim, the claimant's nine-month old child became ill and was hospitalized for periods in both February and April, and required the claimant's care. The child was not discharged from doctor's care until May 5, 2009.

Between May 5 and May 13 the claimant returned to Ottumwa; on May 13 she presented herself to the employer, seeking to return to work, and provided doctor's notes indicating that the claimant had been attending to both her mother and to her child while they were ill, through May 5. The employer indicated that it would do what it could to return her to work, but ultimately said there was nothing more they could do to return her to work.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Where the quit is for a family member's medical or health reasons, the quit is disqualifying at least until the family member has recovered and seeks to return to work but no work is available with the employer. Iowa Code § 96.5-1-c; 871 IAC 24.26(8).

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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). A three-day no-call, no-show in violation of company rule is considered to be a voluntary quit. 871 IAC 24.25(4). Further, a failure to return after a specified vacation or leave period is considered to be a voluntary quit. 871 IAC 24.25(25); 871 IAC 24.22(2)j(3). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2.

In order for the quit to care for her ill family members to be attributable to the employer, the claimant must also demonstrate that she sought to return to work with the employer, but no work was available. A voluntary quit can be for good cause attributable to the employer even if the employer is free from any negligence or wrongdoing. Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956); Shontz v. IESC, 248 N.W.2d 88 (Iowa 1976). While the employer had a good business reason for not holding the claimant's position open for her or returning her to work when she sought to come back, and was within its legal rights, the claimant has satisfied her burden under the statute to qualify her for benefits. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's July 17, 2009 decision (reference 01) is modified in favor of the claimant. The claimant voluntarily left her employment in order to care for an ill or injured family member, and did offer to return to work. Benefits are allowed, if the claimant is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs