

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MYRNA F WHITLOW
Claimant

APPEAL NO. 11A-UI-00118-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRASER TRANSPORTATION SERVICES
Employer

OC: 07/11/10
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Myrna Whitlow (claimant) appealed a representative's December 28, 2010 decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Fraser Transportation Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 10, 2011. The claimant participated personally. The employer participated by Brian Hoffman, Director of Operations; Mike Cox, Supervisor; Tina Buchanan, Dispatcher; and Anna Hoffman, Dispatcher Team Leader.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired on October 1, 2010, as a full-time dispatcher. The employer met with the claimant on November 22, 2010, to discuss the claimant's performance on November 19, 2010. The claimant indicated she needed more training and the employer offered additional training. The claimant said the amount of training was not enough. The employer asked the claimant what he should do. The claimant did not offer any suggestions. The employer said the offer was still there for more training and the decision was the claimant's. The claimant turned down the training. The employer indicated that they were done with the meeting and the claimant left work. She thought her performance was unsatisfactory to the employer. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

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.

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 § 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:

(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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her actions. When an employee quits work because she believes her performance is not to the satisfaction of the employer and the employer has not requested her to leave, her leaving is without good cause attributable to the employer. The claimant left work because she thought her performance would result in her termination even though the employer did not request her to leave. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's December 28, 2010 decision (reference 03) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs