

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANN L PETERS
Claimant

APPEAL 16R-UI-06330-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THOMAS L CARDELLA & ASSOCIATES INC
Employer

OC: 03/27/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Ann L. Peters (claimant) filed an appeal from the April 13, 2016 (reference 01) unemployment insurance decision that denied benefits based upon the determination she voluntarily quit her employment by refusing to continue to work which is not a good cause reason attributable to Thomas L. Cardella & Associates, Inc. (employer). The parties were properly notified about the hearing. A telephone hearing was held on June 27, 2016. The claimant participated personally. The employer did not participate.

ISSUE:

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the employer discharge the 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: The claimant was employed full time as a Sales Representative beginning on July 8, 2015. The claimant was also the only caretaker for her blind, 78-year old mother who lives alone. On January 28, 2016, the claimant left work during her break to take her mother to the hospital. The following day her mother had emergency surgery. The claimant called the employer to notify her supervisor, Jeremy Davis, she would not be in to work.

On February 1, 2016, the claimant's mother was still in the hospital and the claimant spoke to Davis' supervisor, General Manager Dylan. The claimant told Dylan she needed two weeks off work to care for her mother. He said he would get back to her. The claimant knew she was not eligible for leave under the Family Medical Leave Act, as she had not been employed with the employer for a year.

On February 2, 2016, the claimant notified her supervisor she would not be at work and her mother was released from the hospital. On February 3, 2016, the claimant notified her supervisor she would not be at work. He sent her a text message back saying it was

mandatory for her to report to work at 11:00 a.m. that day. The claimant said she would not be in to work. The claimant called the employer at 6:24 a.m. the following morning, before the office opened at 7:00 a.m., and left a voice message to report absence and inquire about the status of her employment. The employer did not contact the claimant. The claimant was available to return to work on February 16, 2016, as her mother no longer needed care. The claimant did not contact the employer at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily separated from her 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(20), (23), and (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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

(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.

The 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). 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 was unable to continue reporting to work due to serious family needs and stopped calling in to notify her supervisor of her absences. She did not contact the employer once she was able to return to work. The employer did not tell the claimant that she was discharged or

terminated; the claimant just assumed or felt like she had been discharged. The claimant voluntarily quit her employment. While the claimant's decision to leave her employment may have been based upon good personal reasons, it was not for a good cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The April 13, 2016 (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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