

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELODY L BOWEN
Claimant

APPEAL NO. 09A-UI-04322-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CDS GLOBAL INC
Employer

OC: 04/27/08
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Melody Bowen (claimant) appealed a representative's March 5, 2009 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with CDS Global (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 9, 2009. The claimant participated personally. The employer participated by Linda Burns, Employee Relations Specialist; Deborah Williams, Customer Service Manager; and Paula Burnett, Customer Service Supervisor.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

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 27, 2008, as a full-time customer service representative. At the time of hire the employer told the claimant she might be eligible to receive a raise in April 2009, based on her performance. The employer issued the claimant verbal and written warnings for tardiness and improper reporting of absences. The claimant was tardy five times due to transportation issues. The claimant was afraid she would be terminated for attendance issues.

In January 2009, the employer announced that pay raises would average 2.5 percent. The claimant was disappointed, thinking she would receive a smaller pay raise in April 2009, than she hoped. Based on her prospects for a pay raise that she wanted and her fear of termination, the claimant decided to quit work. She quit work on February 9, 2009, to become self-employed as a daycare provider. 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 section 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 section 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 section 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.

871 IAC 24.25(13) 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 section 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 section 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

Iowa Code section 96.5-4-a-b provides:

An individual shall be disqualified for benefits:

4. Labor disputes. For any week with respect to which the department finds that the individual's total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which the individual is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the department that:

- a. The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and
- b. The individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.

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 words and 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 she to leave, her leaving is without good cause attributable to the employer. When an employee quits work because she becomes self-employed, her leaving is without good cause attributable to the employer. When an employee quits work because she is dissatisfied with her wages and knew the rate of pay when hired, 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. She left to become self-employed. She also left because she wanted a larger raise than might be offered even though she knew hourly wage when she was hired. 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 March 5, 2009 decision (reference 02) 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/css