

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA S PETERSON NEWCOMB
Claimant

APPEAL NO. 10A-EUCU-00215-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 08/02/09
Claimant: Appellant (1/R)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Laura Peterson Newcomb (claimant) appealed a representative's March 8, 2010 decision (reference 06) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Stream International (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 10, 2010. The claimant participated personally. The employer participated by Staci Albert, Human Resources Generalist. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit One was received into evidence.

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 November 16, 2009, as a full-time customer support professional. The claimant told the employer at the time of hire she would like to work daytime hours. On her on-line application the claimant indicated she was flexible and could work any hours. The claimant stopped appearing for work after January 29, 2010, because she wanted to work daytime hours so she could work a second job in the evenings. The claimant did not have an evening job but wanted to find one. She is now self-employed as a nanny. 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(18) 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:

(18) The claimant left because of a dislike of the shift worked.

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. She stopped appearing for work. When an employee quits work because she is dissatisfied with her hours, her leaving is without good cause attributable to the employer. The claimant left work because she wanted to work daytime hours. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The issue of whether the claimant is able and available for work is remanded for determination.

DECISION:

The representative's March 8, 2010 decision (reference 06) 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. The issue of whether the claimant is able and available for work is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs