

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBIN K KANE
Claimant

APPEAL NO. 14A-UI-05981-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEVENTH AVENUE INC
Employer

OC: 06/23/13
Claimant: Appellant (4)

871 IAC 24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

Robin Kane filed a timely appeal from the May 29, 2014, reference 02, decision that disqualified her for benefits based on an agency conclusion that she had voluntarily quit without good cause attributable to the employer on May 8, 2014. After due notice was issued, a hearing was held on July 2, 2014. Ms. Kane participated. Grace Cooper represented the employer. Exhibits One and Two were received into evidence.

ISSUE:

Whether there was a disqualifying separation from the employment or a leave of absence requested by the claimant and approved by the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Robin Kane began her employment with Seventh Avenue, Inc., in 2010 and continues as an employee of that employer as a packer/puller. On May 9, 2014, Ms. Kane commenced a leave of absence that she requested and that the employer approved, so that Ms. Kane could try a job at another employer. Ms. Kane did not notify the employer that she was quitting and the employer did not take Ms. Kane off its payroll. Ms. Kane returned from her leave of absence on May 15, 2014 and returned to her previous duties.

REASONING AND CONCLUSIONS OF LAW:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson

Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Admin. Code r. 871-24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The evidence presented by the parties is uncontroverted. Ms. Kane requested, and the employer approved, a leave of absence for the period of May 9, 2014 through May 14, 2014. Ms. Kane did not intend to quit, did not in fact quit, and the employer did not document a separation from the employment. There was no separation from the employment for unemployment insurance purposes and, therefore, no disqualification for benefits that might attach to a voluntary quit. Ms. Kane would not be eligible for benefits during the period of the approved leave of absence, but Ms. Kane did not attempt to claim benefits for the period of the leave of absence.

DECISION:

The claims deputy's May 29, 2014, reference 02, decision is modified as follows. There was no separation from the employment and, therefore, no disqualification for benefits based on a separation from the employment. The claimant was on an approved leave of absence during the period of May 9-14, 2014. The claimant is not eligible for benefits for that period.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs