

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA G TREVINO
Claimant

APPEAL NO. 12A-UI-08171-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE HON COMPANY
Employer

OC: 05/27/12
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated June 28, 2012, reference 01, which denied unemployment insurance benefits finding the claimant voluntarily left employment without good cause. After due notice a telephone hearing was held on August 2, 2012. Claimant participated. The employer participated by Ms. Sandra Linsin, Hearing Representative, and witnesses: Ms. Cherie McClusky, Human Resource Manager and Mr. Jake Swift, Supervisor. Employer's Exhibits One, Two and Three were received into evidence.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Maria Trevino was employed by The Hon Company from October 10, 2005 until February 9, 2012 when she left employment by failing to return to work without providing any notification to the employer for three or more consecutive work days. Ms. Trevino was employed as a full-time production worker and was paid by the hour. Her immediate supervisor was Jake Swift.

Ms. Trevino left her employment The Hon Company when she failed to return to work after a period of time away from work due to hospitalization. The claimant had been authorized to return by her physician. The claimant's physician had left the decision as to whether to return to work up to the claimant. Ms. Trevino believed that her asthmatic health condition prevented her from returning to work. When Ms. Trevino had not returned to work as expected on February 1, 2 or 3 as well as February 6 and 7, 2012 and had not provided any notification to the employer, the employer reasonably considered that Ms. Trevino had relinquished her position with the company. Under company policy employees who fail to report or provide notification for three or more consecutive work days are considered to have voluntarily quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily left employment 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(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

An employer is entitled to expect its employees to report for work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the evidence in the record establishes that Ms. Trevino failed to report for work or notify the employer for three or more consecutive work days in violation of the company's policy, claimant is considered to have voluntarily left employment. The evidence in the record establishes that Ms. Trevino had made a decision not to return because she believed that the work was having a negative effect on her health.

An individual who voluntarily leaves their employment must first give notice to the employer of the reason for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991). Prior to leaving employment Ms. Trevino had requested to be changed to a different job position but had not indicated that she would quit employment if the conditions that the claimant felt were unfavorable continued.

Inasmuch as the claimant did not give the employer notice of her intention to quit if her dissatisfaction about work assignments were not resolved, the separation was without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's decision dated June 28, 2012, reference 01, is affirmed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs