

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CINDY L CATES**  
Claimant

**APPEAL NO. 09A-UI-03634-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OZARK AUTOMOTIVE DISTRIBUTORS INC**  
Employer

**OC: 02-15-09**  
**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 5, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 29, 2009. The claimant did participate along with her witness Steven Thomas White. The employer did participate through (representative) Whitney Smith, Human Resource Supervisor; Cheryl Branson, Order Section Supervisor; and Matt Shepherd, Receiving Supervisor. Employer's Exhibit One was received.

**ISSUE:**

Did the claimant voluntarily quit her employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as an order selector part time beginning June 20, 2007 through January 21, 2009 when she voluntarily quit.

The claimant was taking FMLA leave for her allergy problems as well as to help her ill fiancé. On January 21, Cheryl Branson told the claimant she was being written up for calling in late to work on January 11. Ms. Branson also told the claimant that she was going to be written up for missing work on December 12 through December 14. The claimant explained what had occurred on December 12 through December 14 and Ms. Branson told the claimant that she would speak to Whitney Smith in human resources about the write up. Ms. Branson followed up with Ms. Smith and they determined that the claimant would not be written up for missing work in December. During the disciplinary meeting on January 21 the claimant was not told she was going to be discharged at all. She was told that because her FMLA had only been approved for her own allergies, she would not be allowed to take FMLA leave to deal with her fiancé illness. An employer does not have to allow FMLA to be used for a fiancé.

The claimant never returned to work after the disciplinary meeting and was a no-call/no-show for work thereafter. Continued work was available if she had reported back to work.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the 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(28) 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:

(28) The claimant left after being reprimanded.

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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6(2).

Had the claimant returned to work she would have learned that the employer was not going to write her up for her absences in December. The claimant was written up for calling in late for work on January 11, 2009. An employer is allowed to discipline employees. The claimant did call in late for work on January 11, thus the discipline was appropriate. The claimant was also told she was not going to be allowed to use FMLA time to care for her ill fiancé. Under federal law the employer was not obligated to let the claimant use FMLA time for her fiancé. The claimant then stopped showing up for work.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are withheld.

**DECISION:**

The March 5, 2009, reference 01, decision is affirmed. The claimant voluntarily left her 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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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