

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRAH J BLAKELY
Claimant

APPEAL NO. 08A-UI-00893-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RINDERKNECHT ASSOCIATES INC
Employer

OC: 12/30/07 R: 03
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 18, 2008, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on February 11, 2008. Claimant participated with Lonny Jones. Other witnesses were not called as they had no direct relevant information. Employer participated through Monte Goodell.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time laborer for general contractor Rinderknecht assigned most recently to a job at customer Aegon since February 2007. She began the employment in 1999 and her separation was January 2, 2007. She last worked on Friday, December 21 and had family problems and no transportation so she stayed home over the holidays to get her vehicle situation resolved in spite of not having made a vacation or time off request. Claimant had assumed there would be no work on December 24 and 26 in addition to Christmas day so did not call in to report her absences. She did not call employer to report any absences the remainder of the week and had no intention to contact employer until January 2, 2008. On December 27 Goodell called her to ask how she wanted to get her paycheck since she did not work on payday December 26. Goodell told her that everyone else was working and there was no additional time off beyond Christmas day and asked claimant if she did or did not want to work. Claimant did not mention family issues or transportation to him and said she did want to work "but you just don't understand" and hung up. There was no further communication until she reported on January 2, 2008, apologized for messing up his schedules and told him she was there to pick up her tools. Goodell said her tools were in the storage room because the remodel job was completed during the week she was absent. Continued work was available.

Claimant is eligible for rehire but needs to maintain communication with job superintendents to see if they have any work available at various locations in Cedar Rapids.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged but voluntarily left her employment without good cause attributable to the employer.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

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 has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer.

Since claimant did not report her absences to employer or request time off in advance, even if she had not said she was there on January 2 to pick up her tools, employer was reasonable to believe she quit. Since her assumption of having been fired was erroneous, claimant's failure to continue reporting to work was an abandonment of her job. Benefits are denied.

DECISION:

The January 18, 2008, reference 01, decision is affirmed. The claimant voluntarily left 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs