IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

LISA E SMITH
Claimant

MEDIACOM COMMUNICATIONS CORPORATION
Employer

APPEAL NO. 08A-UI-05669-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/11/08 R: 02
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Lisa Smith filed a timely appeal from the June 9, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 9, 2008. Ms. Smith participated and presented additional testimony through Jessica DeMaris. Mimi Luongvan, Senior Manager, Human Resources represented the employer and presented additional testimony through Brian Martin, Direct Sales Supervisor. Exhibits A through F and One through Four were received into evidence. At the request of the employer, the administrative law judge took official notice of the documents submitted for or generated in connection with the June 4, 2008 fact-finding interview. Bother parties were provided with a copy of the fact-finding materials prior to the hearing.

ISSUES:

Whether Ms. Smith voluntarily quit or was discharged from the employment. The administrative law judge concludes that Ms. Smith voluntarily quit.

Whether Ms. Smith's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lisa Smith was employed by Mediacom Communications Corporation as a full-time District Sales Representative from September 2007 until May 7, 2008. Ms. Smith's duties involved selling cable services to customers and prospective customers. Ms. Smith's normal work hours were Monday through Friday, noon or 1:00 p.m. until 8:00 p.m., and Saturday, 8:00 a.m. until 1:00 p.m. On March 24, 2008, Brian Martin was promoted to direct sales supervisor and became Ms. Smith's immediate supervisor. Mr. Martin's office was in Cedar Rapids. Ms. Smith performed her duties in the Mason City area. The employer had provided Ms. Smith with a cell phone she could use to communicate with the employer.

On Sunday, May 4, 2008, Ms. Smith was admitted to the hospital for evaluation and/or treatment of an ongoing medical condition. Ms. Smith notified coworker Jessica DeMaris that

she had been admitted to the hospital and asked Ms. DeMaris to pass the information along to Mr. Martin. Ms. Smith had not taken her business cell phone to the hospital with her. The call to Ms. DeMaris was a local call. The call to Mr. Martin would be long distance. Ms. Smith did not believe she could make a long distance call from the hospital to Mr. Martin. Ms. Smith's health condition did not prevent her from making telephone calls and Ms. Smith was at all relevant times physically able to make a telephone call to Mr. Martin.

The employer has an employee handbook that contains an absence notification policy. Ms. Smith had received a copy of the handbook and was aware of the absence notification policy. The policy required that Ms. Smith personally notify her supervisor prior to the scheduled start of her shift if she needed to be absent from or late for work. The policy prohibited leaving messages or relaying messages through other employees. The attendance policy contained a separate provision regarding "no-call, no-show" absences. That provision indicated that three consecutive workdays of "no-call, no-show" absences would be considered job abandonment, except in emergency situations. The policy indicated that the management would exercise its discretion with regard to emergency situations. In a complete separate area of the handbook dealing with Flex Time, the employee handbook indicates that if an employee is taking Flex Time for an unexpected event, the employee should notify a supervisor at least one hour prior the scheduled start of the shift. The Flex Time policy indicated that relatives and friends should not call in for the employee except in an emergency.

On Monday, May 5, District Sales Representative Jessica DeMaris sent Mr. Martin an e-mail message that included information about Ms. Smith's hospitalization and absence from work. The message reads as follows: "Lisa is in the E.R. she been there 5/4/08 she don't know how long she will be there she is very sick." The bulk of Ms. DeMaris' e-mail to Mr. Martin contained information regarding Ms. DeMaris' sales activities. Mr. Martin responded at 12:01 p.m. with the message, "Thank you, keep me informed."

On the Sunday, May 4, Ms. DeMaris spoke to Mr. Martin by telephone and told him that Ms. Smith had been hospitalized for something relating to her colon and that this was not the first time Ms. Smith had been treated for such issues. Ms. DeMaris indicated that Ms. Smith had telephoned her and had asked her to relay information to Mr. Martin. Mr. Martin said, "Fine." Mr. Martin concluded that Ms. Smith must have been unable to make the call to him. Mr. Martin expected he would hear further from Ms. Smith or Ms. Smith's family.

Mr. Martin learned on Monday, May 5, that the employer did not consider notice from Ms. DeMaris regarding Ms. Smith's absence to be proper notification. On Monday, May 5, Mr. Martin left a message on Ms. Smith's business cell phone asking her to call him. On Tuesday, May 6, Mr. Martin left a similar message on Ms. Smith's business cell phone. At 9:00 a.m. on Wednesday, May 7, Mr. Martin left a third message for Ms. Smith. Mr. Martin said in his message that he had not heard anything other than the information he had received from Ms. DeMaris. Mr. Martin referenced that Ms. Smith had now been absent for three days and that he needed to speak with her or a family member about the absence. Mr. Martin referenced his prior contact with Ms. DaMaris regarding Ms. Smith's absence. Mr. Martin asked Ms. Smith to please call him.

Ms. Smith was discharged from the hospital during the early afternoon on May 7. Ms. Smith's husband took her home. Ms. Smith reviewed the messages on her business cell phone. Ms. Smith called Mr. Martin at approximately 2:00 p.m. Mr. Martin was at the Mason City office for a previously scheduled meeting. During the telephone call, Mr. Martin mentioned that he had been in contact with the human resources department regarding Ms. Smith's absence. Mr. Martin indicated that Ms. Smith had been absent three days without properly notifying him.

Mr. Martin indicated that other employees had been discharged for similar conduct and that he needed to talk to Ms. Smith about the absence. Mr. Martin did not tell Ms. Smith that she was in fact fired. Mr. Martin knew that he did not have the authority to hire or fire employees without corporate approval. Ms. Smith erroneously concluded that she was fired and abruptly terminated the call. Mr. Martin immediately attempted to reinitiate the call, but Ms. Smith did not answer. Mr. Martin asked Ms. Smith to please call him and that he did not understand why she had terminated the call. Ms. Smith had received no prior reprimands for attendance.

Mr. Martin attempted to call Ms. Smith again on May 8. Mr. Martin learned that Ms. Smith had been in contact with an administrative assistant in the Cedar Rapids and had asserted to that employee that she had been fired. The administrative assistant told Mr. Martin that she had attempted to transfer Ms. Smith to the human resources staff, but that the call was somehow disconnected. The administrative assistant had told Ms. Smith that she should speak with the human resources department about her concerns.

On Thursday, May 9, Mr. Martin again telephoned Ms. Smith and left a message asking her to please call and that he needed to find out what was going on. On Friday, May 10, Mr. Martin again called Ms. Smith and left a similar message. Ms. Smith did not respond to Mr. Martin's multiple phone messages. Instead, Ms. Smith sent Mr. Martin an e-mail message. In the e-mail, Ms. Smith asserted that Mr. Martin had fired her on Wednesday, May 7 and that the administrative assistant had confirmed the firing on May 8. By the time Mr. Martin received the e-mail message from Ms. Smith, Human Resources Manager Mimi Luongvan had instructed him to leave the matter for Ms. Luongvan to address.

Mr. Martin had first consulted with Ms. Luongvan after the May 7 telephone call with Ms. Smith. Ms. Luongvan indicated that she would follow up with Ms. Smith. The employer acknowledged the medical basis of the absence and did not intend to treat the absence as job abandonment. On May 7 or 8, Ms. Luongvan attempted to contact Ms. Smith, but had to leave a message. Ms. Luongvan indicated that she had spoken to Mr. Martin, that he was upset that Ms. Smith was upset. Ms. Luongvan asked Ms. Smith to return her call so that they could talk. The next day, Ms. Smith left a message for Ms. Luongvan that she was returning Ms. Luongvan's call and to call her back. Within the next day or two, Ms. Luongvan attempted to reach Ms. Smith, but had to leave a message. Ms. Luongvan thanked Ms. Smith for her call and indicated that she still wanted to speak with Ms. Smith. Soon thereafter, the employer received a notice of claim concerning Ms. Luongvan's application for unemployment insurance benefits. Ms. Luongvan concluded Ms. Smith had quit the employment. On June 4, 2008, the parties participated in a fact-finding interview. On June 6, Ms. Luongvan sent Ms. Smith a letter indicating that employer deemed her to have voluntarily quit on June 4, 2008 by failing to return to work.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether Ms. Smith voluntarily quit or was discharged from the employment. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

The greater weight of the evidence in the record establishes that Ms. Smith's separation from the employment took the form of a voluntary quit. The weight of the evidence fails to establish that Mr. Martin told Ms. Smith she was discharged from the employment during the telephone call on May 7. The evidence indicates instead that Mr. Martin merely expressed concerns about the absence and concerns about complying with the employer's absence notification policy. The weight of the evidence indicates that Ms. Smith either wanted to be discharged from the employment or erroneously concluded that she had been discharged from the employment. The weight of the evidence does not establish that Mr. Martin said anything during the May 7 telephone call that would have prompted a reasonable person to conclude he was discharging Ms. Smith from the employment. The parties' conduct after the May 7 telephone call is telling. The evidence indicates that Mr. Martin immediately attempted to follow up with Ms. Smith. This conduct is inconsistent with a discharge. The evidence indicates that Ms. Smith avoided direct contact with Mr. Martin. The evidence fails to establish that the administrative assistant confirmed on May 8 that there had been a discharge. The evidence indicates instead that Ms. Smith asserted to the administrative assistant that she had been discharged and the administrative assistant attempted to put Ms. Smith in contact with the human resources staff to further discuss the matter. The evidence indicates that Ms. Smith failed to contact the human resources department after this call. The evidence indicates that Ms. Luongvan left several messages for Ms. Smith and indicated a clear desire to further discuss Ms. Smith's employment. This conduct is inconsistent with a discharge. Based on the evidence in the record, the administrative law judge concludes Ms. Smith voluntarily quit and was not discharged from the employment.

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.

The evidence in the record fails to establish that Ms. Smith's voluntarily quit was for good cause attributable to the employer. The evidence indicates instead that Ms. Smith quit in response to a mild reprimand for failing to properly notify the employer of her absences and quit in response to an apparent personality conflict with her new supervisor. Such quits are presumed to be without good cause attributable to the employer. See 871 IAC 24.25(28) and (22).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Smith voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Smith is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Smith.

DECISION:

The Agency representatives June 9, 2008, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant

is disqualified for benefits until she has worked in a been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

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