

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELENA FETTERLY
Claimant

APPEAL NO: 12A-UI-11023-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IBM CORPORATION
Employer

OC: 08/12/12
Claimant: Appellant (1)

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Elena Fetterly (claimant) appealed an unemployment insurance decision dated September 6, 2012, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with IBM Corporation (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 8, 2012. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted and, therefore, did not participate. Claimant's Exhibits A and B were admitted into evidence. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time IT Specialist from January 25, 2010 through July 23, 2012, when she voluntarily quit. Her family is located in California and she testified she was occasionally allowed to work remotely, although there was no guarantee of that and it was not done on a regular basis. The claimant stated that she was not getting as much overtime as when she was originally hired but does not discuss whether a certain number of overtime hours were promised. She wrote a letter to Iowa Workforce dated September 10, 2012 in an attempt to backdate her claim. The claimant explained that she turned in her resignation with the effective date of July 23, 2012 because:

“#1: My husband and two daughters are in California but IBM no longer supports working remote from home occasionally if the reason is only to spend time with family.

#2: It has become economically burdensome working away from home. When I interviewed for IBM in 2009, it indicated that even though the salary was low the overtime work would compensate for the 42% pay cut I took. I moved to Dubuque in January 2010 and worked there for 2½ years. However, IBM has severely limited OT work and as a result I could not financially support my mortgage in CA and rent in IA as well as travel expenses and other duplicate costs such as insurance, utilities, car/gas, etc.

#3: I am the primary representative of my elderly mother in California whose health has been deteriorating.”

After the claimant’s unemployment benefits were denied, she wrote an appeal letter to Iowa Workforce on September 12, 2012. The basis for her separation was the same as in her original letter except that she attributed it to the employer’s policy changes.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the reasons for the claimant’s separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

871 IAC 24.25(2) 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 § 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 § 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:

(2) The claimant moved to a different locality.

871 IAC 24.25(23) 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 § 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 § 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:

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

The claimant has the burden of proving that the voluntary quit was with good cause attributable to the employer. Iowa Code § 96.6-2. However, the evidence demonstrates she voluntarily quit on July 23, 2012 for personal reasons. Benefits are therefore denied.

DECISION:

The unemployment insurance decision dated September 6, 2012, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw