

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ANGELA N CABAL-KESSLER
Claimant

APPEAL NO. 19A-UI-05129-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONCERNED INCORPORATED
Employer

OC: 11/18/18
Claimant: Respondent (5)

Iowa Administrative Code rule 871-24.1(113) – Other Separations

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 21, 2019, reference 06, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on May 29, 2019 for no disqualifying reason. After due notice was issued, a hearing was held on July 22, 2019. Claimant Angela Cabal-Kessler participated. Staci Hess represented the employer and presented additional testimony through Alisha Edgecomb and Mindy Gordon. Exhibits 1 through 5 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits paid to the claimant.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies the claimant for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Concerned Incorporated provides home and community based support services to individuals with cognitive and/or physical disabilities. Angela Cabal-Kessler was employed by Concerned Incorporated as a full-time Supported Community Living Site Counselor from May 16, 2019 until May 29, 2019. Ms. Cabal-Kessler has non-work related medical issues that predate the employment. Prior to accepting the employment, Ms. Cabal-Kessler considered the impact her medical issues might have on her ability to perform the duties associated with the employment and sought to observe the employer's operations in one of the homes operated by the employer. An employer representative declined that request and cited HIPAA concerns. On the first day of the employment, the employer provided Ms. Cabal-Kessler with a written job description for the SCL Site Counselor position and had Ms. Cabal-Kessler sign the job description. The job description included a section on the physical demands of the employment, as follows:

Physical Demands:

1. Lift 40 lbs.
2. Obtains a physical examination from a licensed physician upon offer of employment.

3. Manual dexterity to include, but not limited to, the following: stooping, bending, lifting, and carrying.

On May 29, 2019, Ms. Cabal-Kessler submitted to a physical examination conducted by a physician designated by the employer. The medical doctor found Ms. Cabal-Kessler physically incapable of the duties associated with the employment, as follows:

I unfortunately can see many possible episodes where either Angela or her residents could be harmed by Angela's underlying health problems. I do not feel even with accommodations that this job would be appropriate for her. Did discuss this with her in detail and she agrees.

Immediately following the physical examination, Ms. Cabal-Kessler reported to her immediate supervisor, Alisha Edgecomb, SCL Site Coordinator. Ms. Cabal-Kessler shared with Ms. Edgecomb that the doctor had determined the employment was not suitable. Ms. Cabal-Kessler told Ms. Edgecomb that she did not want to have to worry about her safety or the safety of the employer's clients. Ms. Edgecomb provided Ms. Cabal-Kessler with a piece of paper upon which Ms. Cabal-Kessler wrote the following:

It is with great regret that I must extend my resignation effective as of today. After thorough consideration and the physical today, it/I has/have determined that my health and medical condition are not conducive to working in the current position since it could put members and myself at risk.

I would like to thank you and Concerned Inc. for the opportunity provided and the immense lessons learned. The staff and members I worked with will be greatly missed.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113), provides as follows:

All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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.

This separation was neither a *voluntary* quit nor a discharge. See Iowa Code section 96.5(1) (regarding voluntary quits with or without good cause attributable to the employer) and Iowa Code section 96.5(2)(a) (regarding discharges for misconduct in connection with the employment). Rather, this separation falls into another category of separations known as “other separations.” This separation was wholly based on the medical doctor’s determination that Ms. Cabal-Kessler failed to meet the physical standards required for the employment. The doctor in question was designated by the employer. The employer included the physical examination in question as a condition of the employment. Given the medical doctor’s unequivocal statement that Ms. Cabal-Kessler could not perform the duties associated with the employment even with accommodations, a reasonable person would conclude there was nothing left to do but formalize the separation and for the parties to move on. In the context of the medical doctor’s determination, the employer’s belated assertion that Ms. Cabal-Kessler should have nonetheless pursued accommodations and try to remain to remain in the employment is unreasonable. Ms. Cabal-Kessler is eligible for benefits provided she is otherwise eligible. The employer’s account may be charged.

The administrative law judge notes that this employer is not a base period employer for purposes of the claim year that began for Ms. Cabal-Kessler on November 18, 2018 and that will end for Ms. Cabal-Kessler on November 16, 2019. That means that this employer’s account has not be assessed for benefits paid to Ms. Cabal-Kessler in connection with her current claim year and would not under any circumstances be charged for benefits paid to Ms. Cabal-Kessler in her current claim year. However, in the event that Ms. Cabal-Kessler establishes a new claim year on or after November 17, 2019 and is determined to be eligible for benefits, and if the employer is determined to be a base period employer in connection with that future claim year, the employer’s account may be assessed for benefits of up to one-third of the wages paid to Ms. Cabal-Kessler in connection with the brief employment.

DECISION:

The June 21, 2019, reference 06, decision is modified as follows. The claimant neither *voluntarily* quit nor was she discharged from the employment. The claimant’s separation falls into the category of “other separations” and was due her inability to meet the physical requirements of the employment. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The employer’s account may be charged for benefits as outlined above.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs