

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LEANNA M HOLETON
Claimant

**TURF MASTERS LAWN & LANDSCAPE
LLC**
Employer

APPEAL NO. 19A-UI-06174-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/07/19
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Leanna Holeton filed a timely appeal from the August 1, 2019, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. Holeton voluntarily quit on April 17, 2019 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 15, 2019. Ms. Holeton participated personally and was represented by attorney Leonard Bates. The employer registered a telephone number for the appeal hearing, but waived participation in lieu of fully complying with discovery. Exhibits 1 through 16 were received into evidence.

ISSUE:

Whether the claimant'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: Leanna Holeton was employed by Turf Masters Lawn & Landscape, L.L.C. as a full-time Crew Leader. Ms. Holeton began the employment in August 2018 and last performed work for the employer on April 17, 2019. Ms. Holeton's work hours were 7:00 a.m. to sometime between 4:00 p.m. and 6:00 p.m., Monday through Friday. Ms. Holeton performed about half of her landscaping work at private residences and about half of her work at public facilities. Ms. Holeton's landscaping work included working in flower beds and trimming bushes. Ms. Holeton would operate power equipment when she trimmed bushes and when she operated a weed trimmer. Josh Bontrager, Manager of Operations, was Ms. Holeton's supervisor throughout the employment. Joshua Schonhorst is the business owner. The employer had 25 to 30 employees when Ms. Holeton worked for the employer. During Ms. Holeton's employment, she was the only female employee.

Ms. Holeton has a history of mental health concerns that factored in her separation from the employment. Ms. Holeton was diagnosed with depression when she was in fourth grade. Ms. Holeton was diagnosed with bipolar disorder when she was 14 years old. In conjunction with the bipolar diagnosis, Ms. Holeton participated in multiple inpatient treatments. In 2018, Ms. Holeton's mental health issues were aggravated by the death of her father and she was

diagnosed with post-traumatic stress disorder (PTSD), generalized anxiety disorder, and paranoia. Toward the end of the employment, Ms. Holeton suffered a panic attack at work. Ms. Holeton discussed her mental health diagnoses with her supervisor.

In December 2018, Ms. Holeton mentioned to her supervisor her desire to obtain an emotional support animal. Up to that time, Ms. Holeton had not taken any steps to acquire an emotional support animal.

In 2019, Ms. Holeton took steps toward securing an emotional support animal. On February 14, 2019, Ms. Holeton obtained a terrier dog that she hoped have trained as a service animal. Ms. Holeton has provided a February 25, 2019 memo from her therapist. See Exhibit 16. The memo is from Ann Grant, M.A., a Licensed Mental Health Counsel (L.M.H.C.) affiliated with Midwest Counseling. The memo states as follows:

I have seen Ms. Holeton as a client since 10-22-18. I am familiar with her history and with the functional limitations imposed by her emotional/mental related illness.

She meets the definition of disability under the Americans with Disabilities Act, the Fair Housing Act, and the Rehabilitation Act of 1973.

Due to this emotional/mental disability, Leanna has certain limitations related to social interaction/copying, public iteration [sic] regarding stress/anxiety. In order to help alleviate these difficulties, and to enhance her ability to live independently and to fully use and enjoy the dwelling unit you own/or administer, I have prescribed Leanna to obtain a pet or emotional support animal. The presence of this animal is necessary for the emotional/mental health of Ms. Holeton because its presence will mitigate the symptoms she is currently experiencing.

The memo appears to be in support of Ms. Holeton's desire to have the emotional support of the animal to reside with her, rather than a memo intended for submission to the employer. Ms. Holeton did not provide the employer with any medical or mental health documentation. At one point toward the end of the employment, Ms. Holeton offered to provide medical documentation, but the employer told her the employer did not need it.

On March 9, 2019, Ms. Holeton's terrier dog started medical alert service dog training at Knallhart Kennels & Training Academy, L.L.C. On April 9, 2019, Ms. Holeton's terrier dog completed medical alert service dog training and Ms. Holeton collected her dog from the training facility. The service dog had been trained to remain stationary up to 50 feet from Ms. Holeton. The service dog had been trained to alert Ms. Holeton if someone approached Ms. Holeton from behind. The service dog had been trained to intervene when Ms. Holeton experienced a panic attack by resting on Ms. Holeton's torso, by moving Ms. Holeton's hands if Ms. Holeton was covering her face, and by distracting Ms. Holeton.

On April 17, 2019, Ms. Holeton appeared for work with her service dog. When the employer refused to allow Ms. Holeton to have her service dog with her at work, Ms. Holeton left the workplace.

The employer has an Equal Employment Opportunity & Americans with Disabilities Act policy. The policy is set forth in the employee handbook and includes the following:

Moreover, in compliance with the Americans with Disabilities Act (ADA), the Company provides reasonable accommodations to qualified individuals with Disabilities to the fullest extent required by law. The Company may require medical certification of both the disability and the need for accommodation. Keep in mind that the Company can only seek to accommodate the known physical or mental limitations of an otherwise qualified

individual. Therefore, it is your responsibility to come forward if you are in need of an accommodation. The Company will engage in an interactive process with the employee to identify possible accommodations, if any, which will help the applicant or employee perform the job and not create undue burden on the company.

After Ms. Holeton worked on April 7, 2019, she declined to return to work unless the employer accommodated her mental health issues by allowing her to bring her service dog to work. Ms. Holeton consulted with an advocacy group and then communicated with her supervisor via text message regarding proposed accommodation. On April 17, Ms. Holeton wrote, "So...there are options...depends on whether you guys are willing to work with those options." When the employer did not respond to that message, Ms. Holeton reinitiated the correspondence on April 18. Ms. Holeton wrote, "I'm gonna take that as a no...and your "if you can figure something out it's a definite yes" as blowing smoke up my ass...and that's gonna piss me off." Mr. Bontrager replied, "My apologies for not responding yesterday. What are the other options?" In a series of text messages, Ms. Holeton set forth the following:

- A) a 2week trial run, no written complaints we stay, written complaints, we go.
- B) a mass email sent to all accounts stating you have an employee with a Service Dog and you are asking for permission.
- C) we open an investigation to prove why this is a hardship on the company.

I really WANT to continue what I'm doing. I've been a mess since I left yesterday at the thought of losing my job there or being treated differently after everything is said and done.

I have an ada work accommodation rep you can talk to if you would like.

After there was no further response from the supervisor on April 18, Ms. Holeton sent another text message to the supervisor on the morning of April 19: "Have you spoken with anyone yet?" The supervisor did not respond.

Ms. Holeton waited five days for a further response and then sent another text message to the supervisor on April 24, 2019. Ms. Holeton wrote: "So do I need to file for unemployment while you make this decision...or are yall waiting for me to quit???? Or what's going on. Cause I'm not going to. Yall are gonna have to fire me. " Several hours later, after the supervisor had not responded, Ms. Holeton sent one more text message to the supervisor. Ms. Holeton wrote, "Do I really need to use the work lawsuit to get your attention?" A few hours later, the supervisor responded, but limited the response to providing the business owner's phone number.

The employer thereafter refused to engage in discussion regarding whether the employer could reasonably accommodate Ms. Holeton's need and desire to have her service dog accompany her to work. Ms. Holeton did not return to the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Administrative Code rule 871-24.26(4). The test is whether a reasonable person would have quit 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). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d 213 (Iowa 2005).

An employer has an obligation to provide an employee with reasonable accommodations that enable the employee to continue in the employment. See *Sierra v. Employment Appeal Board*, 508 N.W. 2d 719 (Iowa 1993).

The evidence in the record establishes a voluntary quit for good cause attributable to the employer. The quit was effective April 24, 2019, at which time Ms. Holeton gave up on her request to engage in discussion about reasonable accommodation in the face of the employer's stonewalling tactics. Ms. Holeton presented sufficient evidence to prove that she is a disabled person for purposes of the ADA Amendments Act of 2008, 42 USCA § 12101 et seq., and the Iowa Civil Rights Act, Iowa Code Chapter 216 and that employment was subject to that same law. Ms. Holeton presented sufficient evidence to prove that the dog she desired to have accompany her to the workplace was indeed a service animal, specially trained to assist with her multiple mental health diagnoses. The employer's refusal to engage in an interactive process with Ms. Holeton regarding whether the employer could reasonably accommodate the presence of the service animal without undue hardship violated both state and federal law. The employer's refusal to engage in the interactive process created intolerable and detrimental working conditions that would have prompted a reasonable person to leave the employment. Ms. Holeton is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The August 1, 2019, reference 01, decision is reversed. The claimant voluntarily quit the employment for good cause attributable to the employer. The quit was effective April 24, 2019. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn