

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RITA ACKERMAN
Claimant

HY-VEE INC
Employer

APPEAL 21A-UI-05908-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 24, 2021, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on April 28, 2021. The claimant participated and testified. The employer participated through Unemployment Insurance Hearing Representative Barbara Buss and Human Resources Manager Chat Mast. The administrative law judge took official notice of the agency records.

ISSUE:

1. Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?
2. Whether the claimant was able and available for work effective March 29, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, Rita Ackerman, was employed part-time as a cashier for the employer, Hy-Vee, from August 31, 2019 until she was separated from employment on May 28, 2015, when she quit. As a part-time employee, the claimant was not guaranteed hours per week. The claimant's immediate supervisor was Human Resources Manager Roxanne Nowicki.

On August 31, 2019, the claimant informed Product Manager Chad Mast that she was quitting because she no longer wanted to work as a cashier. She had been moved from the employer's kitchen in the previous week. The employer moved her from the kitchen because it was being removed due to a remodel. The claimant was scheduled on fewer days than she had in the kitchen, but her average number of hours remained roughly the same. The claimant's hourly rate did not change. The claimant believed she could obtain more hours at the Salvation Army position she had received a few months before her resignation.

The claimant filed her claim effective March 29, 2020. The administrative record KCCO shows the claimant did not report making any employer contacts throughout her claims period. The claimant maintains she made these contacts, but did not record them when making her weekly claims because they were submitted via Internet applications.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.25 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 section 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 section 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

Iowa Admin. Code r. 871-24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

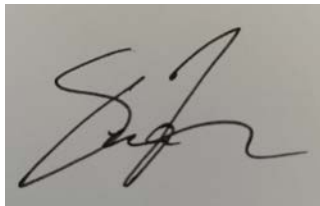
The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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 change in the claimant's position was not substantial enough to constitute a change in the contract of her hire. Her hours and pay did not change substantially. Although the nature of the work changed, it was not a substantial change in the nature of her work. The claimant cannot show her resignation was with good cause attributable to the employer.

While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied. Since the claimant voluntarily quit without good cause attributable to the employer, the issue regarding whether the claimant is able and available for work is moot.

DECISION:

The February 24, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left her 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.



Sean M. Nelson
Administrative Law Judge
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May 6, 2021
Decision Dated and Mailed

smn/scn