

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMIE A MANGIN
Claimant

CARE INITIATIVES
Employer

APPEAL 22A-UI-07484-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/14/21
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 March 18, 2022, (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 May 4, 2022. The claimant participated and testified. The employer participated through Administrator Kacey Kennaby. The employer was represented by Thomas Kuiper, a third party hearing representative. Exhibit 1 was received into the record.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

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

The claimant was employed full-time as a social worker from September 27, 2021, until she was separated from employment on February 22, 2022, when she quit. The claimant's supervisor was Administrator Kacey Kennaby. Ms. Kennaby reported directly to Regional Director Andrew Wagg.

If an employee has a work related concern, then they can address that with their immediate supervisor. If the employee does not believe that their supervisor will address their concern, then they should bring that concern to the next level of management. The employer also has a corporate compliance hotline that allows employees to report work-related concerns anonymously. Information informing employees of this resource is posted in the company breakroom.

On February 22, 2022, the claimant was informed that she was expected at a meeting later that day to speak about these rumors with Director of Nursing Joy Cox, Social Worker Savannah Hartman, and Ms. Kennaby. At the meeting, the claimant was told the meeting had been set up

because the claimant had confided in Ms. Hartman that she was upset about allegations she had made racially tinged statements. The claimant wanted to speak with the individual who reported the concern directly. Ms. Kennaby explained that the concern was that she was coaching residents into saying things they may not otherwise say, but that they were still gathering information about the concern. The claimant replied she believed this is a reference to a day she was working with Certified Nursing Aid Sylvester Gates in January 2022. On that day, the claimant asked, "Who hurt you?" The resident said, "A tall black guy." The claimant then pointed at Mr. Gates to imply that he fit that profile. Later that day, Mr. Gates asked the claimant, "We're cool right?" There were other statements referenced. For instance, the claimant mentioned someone having issues with their daughter's boyfriend, while conducting a background check. another about having children at an advanced age. The claimant also allegedly referred to as a "baby daddy," while referencing the fact that she had children later in life. Ms. Kennaby explained that they were merely gathering information. Ms. Kennaby said that it might help if the claimant apologized especially if she did not mean to offend anyone.

At 5:01 p.m., on February 22, 2022, the claimant overheard a woman say that someone needs to "kick her butt," while she was working at the nurse's station. The claimant did not recognize the voice. The claimant did not report this threat to the employer.

At 9:47 p.m., on February 22, 2022, the claimant sent a text message to Ms. Kennaby informing her of her decision to resign effective immediately. The claimant's written resignation notice reads:

After thinking about the conversation yesterday. I have decided to resign effective immediately. I have thought a lot about it and feel that I didn't do anything wrong to have to apologize. Yesterday, I heard multiple times about the situation that supposedly occurred while sitting in my office. It's one thing to write a letter, another to spread rumors and turn people against [sic] me to make me feel unsafe and unable to do my job. I feel like I am being targeted and in a unsafe work environment. It's sad because I really do love my job and residents. At this point in time I have to think of myself and own well being. I'm sorry I had to do it this way. (Exhibit 1)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant quit without good cause attributable to the employer.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience, the

administrative law judge finds the employer's allegations more credible than the claimant's testimony.

The claimant's appeal characterizes her separation as a quit in lieu of termination. She characterizes the "feeling of being cornered" and being asked to apologize and admit to wrong doing or she "would lose her job." This appears to be a reference to a quit in lieu of termination under Iowa Admin. Code r. 871-24.26 (21). The administrative law judge does not find this allegation credible.

The record reflects the finding that the claimant quit because she felt like she needed to speak with the individual bringing forth the concern because she was concerned about rumors among staff and the threat she overheard later that day. It does not reflect that the meeting on February 22, 2022 was one where the claimant was presented with a termination notice or other disciplinary notice, instead of admitting to certain charges or apologizing. Work would have been provided for the claimant had she not quit.

The administrative law judge will now evaluate whether that quit is disqualifying.

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:

(28) The claimant left after being reprimanded.

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

Iowa Admin. Code r. 871-24.26 (2), (4), (21) provide:

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:

(2) The claimant left due to unsafe working conditions.

(4) The claimant left due to intolerable or detrimental working conditions.

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The claimant had an intention to quit and carried out that intention by tendering a written resignation. As such, 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).

“Good cause attributable to the employer” does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)(“[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith”); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer “free from fault”); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)(“The good cause attributable to the employer need not be based upon a fault or wrong of such employer.”). Good cause may be attributable to “the employment itself” rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956).

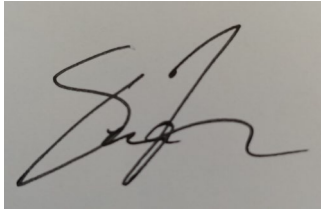
Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O’Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

The administrative law judge does not find the claimant has met the burden to show that her resignation was reasonable under the circumstances. While the claimant is not required per se to report her concerns before resigning due to intolerable circumstances, the claimant conceded she did not even attempted to address the situation internally. In this context, the administrative law judge finds the claimant’s resignation was unreasonable. She jumped to conclusions both about the allegations brought against her. She also assumed the employer would take no action regarding the threat she heard. The administrative law judge believes a reasonable person would have attempted to allay these concerns before joining the ranks of the unemployed. Benefits are denied.

DECISION:

The March 18, 2022, (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
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

July 7, 2022
Decision Dated and Mailed

smn/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.