

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANET A HIRSCH
Claimant

**DUBUQUE COMMUNITY SCHOOL
DISTRICT**
Employer

APPEAL 19A-UI-10290-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/01/19
Claimant: Appellant (5)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the December 23, 2019 (reference 01) unemployment insurance decision that denied benefits based upon her voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on January 22, 2020. The claimant, Janet A. Hirsch, participated personally. The employer, Dubuque Community School District, participated through witness Mindy Klein. Employer's Exhibit 1 was admitted.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a food service worker. She began working for this employer on September 27, 2016 and her employment ended on November 26, 2019. Her job duties included preparing food for students and faculty, as well as cleaning duties. Jo Anne Franck was the claimant's immediate supervisor.

On November 26, 2019, claimant came into work early because there was an event at the school. Claimant was required to wash the breakfast dishes and there were several more dishes than usual due to this event. Typically, three to four workers would wash dishes; however, the claimant was washing dishes for approximately two hours by herself. This included washing and drying. Claimant was upset over having to do four people's work that day. When Angela told the claimant she could do other tasks rather than dishes, the claimant said she was going home. The claimant did not state that she was going home sick for the day. Angela told the claimant that she was going to call her boss, Jo Anne Franck.

After the claimant left on November 26, 2019, Ms. Franck left a voicemail message for the claimant telling her that she needed a written letter as to why she left. Claimant tendered Exhibit 1 to the employer that same day. Exhibit 1 states that the claimant decided she "did not

need this pressure anymore". The letter does not state that the claimant intended to use sick leave or that she would be back to work for her next scheduled shift.

On Saturday, November 30, 2019, claimant received a letter regarding the end of her employment and insurance options. Claimant did not contact the employer about her separation from employment after receiving this letter. There was continuing work available to her had she not quit. Claimant had no disciplinary actions during the course of her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code §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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Claimant had an intention to quit and carried out that intention by saying she was going home and leaving. Further, claimant tendered a written statement that she "did not need this pressure anymore". It is clear that the claimant intended to quit her job and not to simply go home sick on November 26, 2019.

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). Claimant seems to contend in Exhibit 1 that her work conditions were intolerable or detrimental. This can be considered a good cause reason.

Iowa Admin. Code r. 871-24.26(4) 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:

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

As such, if claimant establishes that she left due to intolerable or detrimental working conditions, benefits would be allowed. 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).

“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). Therefore, claimant was not required to give the employer any notice with regard to the alleged intolerable or detrimental working conditions prior to her quitting. However, claimant must prove that her working conditions were intolerable or detrimental.

While it is undisputed that claimant undertook additional job duties on November 26, 2019; those working conditions do not rise to the level of intolerable or detrimental working conditions. Given the facts of this case, claimant has failed to prove that under the same circumstances a reasonable person would feel compelled to resign. See *O’Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). Rather, the circumstances in this case seem to align with the conclusion that was dissatisfied with her work environment in general. This is not a good cause reason attributable to the employer for claimant to have quit.

Iowa Admin. Code r. 871-24.25(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

As such, the claimant’s voluntary quitting was not for a good-cause reason attributable to the employer. Benefits must be denied.

DECISION:

The December 23, 2019 (reference 01) unemployment insurance decision is modified with no change in effect. Claimant voluntarily quit employment on November 26, 2019 without good cause attributable to the employer. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times her weekly benefit amount after her separation date, and provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn