IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

LISA J DAVIS Claimant **EK HEALTH SERVICES INC** Employer	**APPEAL 21A-UI-09436-ML-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/28/21** **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 30, 2021 (reference 01) unemployment insurance decision that found claimant was not eligible for benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 3, 2021. The claimant, Lisa J. Davis, participated personally. The employer, EK Health Services, Inc., was represented by Steve Kline and participated through LeAnn Nienow.

Claimant's Exhibits A through L were offered and received into the evidentiary record. Employer's Exhibit 1 was offered and received into the evidentiary record.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

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

Claimant was employed full-time as a Case Manager, handling cases for Great American. Claimant was employed from March 17, 2016, until March 2, 2021, when she voluntarily quit due to a dispute about billable hours and overtime pay. Claimant's immediate supervisor was Susan Gowan.

The employer distinguishes between hours worked and hours billed. Worked hours are the normal, 8 hours an employee is scheduled to work each day. Billable hours track the manage care activities that employees complete on a file, during the worked hours. Clients pay the employer based on the billable hour. The employer does not pay its employees based on the billable hour. Overtime is not calculated based on billable hours. Employees are expected to bill 100% of their worked time, which would sometimes end up being more than their actual hours worked, as "worked hours" and "billable hours" are calculated differently. For instance, billable hours are often measured in 6 minute increments. So, regardless of whether a task

takes you 1 minute or 5 minutes, for purposes of tracking billable hours, the task would be reported as taking 6 minutes, or ".1" billable hours. Great American utilized this billable structure when paying EK Health Services, Inc.

Overtime hours must be pre-approved by management before they can be reported on employee timecards. Claimant regularly sought authorization to work overtime hours; however, the employer rarely granted claimant's requests. According to the employer, case managers should be able to complete all tasks in an 8-hour workday by being efficient, managing their time appropriately, and utilizing care coordinators and other resources available to them. Care coordinators are assigned to case managers to assist with various daily tasks.

On March 1, 2021, claimant e-mailed Ms. Gowan that she would likely need to work overtime on March 2, 2021, due to a recent influx in cases. In response, Ms. Gowan reminded claimant that the employer does not allow for routine overtime based on workload. The e-mail continued, "As we have discussed in the past, we expect you to delegate as much as possible to the care coordinator, and ask [your Team Lead] for any other ways to prioritize your work or increase time management."

Cindi Nixon, claimant's Team Lead, reviewed claimant's upcoming tasks for March 2, 2021, and relayed her opinion that claimant could complete all tasks without having to work overtime. She further expressed her opinion that a caseload of 51 cases is a very manageable claim count number. Lastly, Ms. Nixon provided, "Unfortunately, there are days we may not get to every diary and it has to roll over to the next day; however, that is just the nature of the work we do."

Claimant tendered her resignation shortly after she received Ms. Nixon's e-mail correspondence.

Claimant's failure to utilize her care coordinator and her inability to limit her hours to 8 hours per day were ongoing concerns to the employer. Claimant routinely reported working more than 8 hours on her timecard without first obtaining management's approval. Claimant was aware that she would not be paid for working more than 8 hours per day without pre-approval. From an ethical standpoint, claimant took issue with having to sign off on a timecard reflecting 40-hour weeks when she knew she was working more than 40 hours each week. Moreover, claimant felt it was unethical for the employer to not pay her overtime for the additional time she was working. In Exhibit K, claimant provided, "We have been told that we are required to put hours worked on our timecards and today I did that. I'm not falsifying my timecard and then signing an attestation stating my hours are correct."

Claimant asserts the employer has previously altered her timecard, even when she had been approved to work overtime. (*See* Exhibit L) However, the only evidence in the record to support such an allegation reflects that the employer corrected its mistake after being notified of the same by claimant. (Exhibit L)

While there were incentives for employees that billed up to 10 hours per day, there is no evidence that the employer required its employees to bill 10 hours per day. There is no evidence claimant was ever disciplined for not billing 8 or more hours in a day.

REASONING AND CONCLUSIONS OF LAW:

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

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).

In this case, claimant voluntarily quit her employment. Claimant's written resignation is both evidence of her intention to sever the employment relationship and an overt act of carrying out her intention. As such, claimant must prove that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

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 notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447–78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added 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 recently concluded that, because the intent-to-quit requirement was added to rule 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. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. Emp't Appeal Bd.*, 494 N.W.2d 660, 662 (Iowa 1993) (*citing Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese*, 389 N.W.2d at 680. "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id*. Where multiple reasons for the quit, which are attributable to the employment, are presented the agency must "consider that all the reasons combined may constitute good cause for an employee to quit, if the reasons are attributable to the employer". *McCunn v. Emp't Appeal Bd.*, 451 N.W.2d 510 (Iowa App. 1989) (*citing Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534 (Iowa 1985)).

Claimant has alleged that she resigned due to a change in the contract of hire, unlawful working conditions, and intolerable or detrimental working conditions.

Where a claimant gives numerous reasons for leaving employment the agency is required to consider all stated reasons which might combine to give the claimant good cause to quit in determining any of those reasons constitute good cause attributable to the employer. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534 (Iowa 1985).

Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

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.
>
> (3) The claimant left due to unlawful working conditions.
>
> (4) The claimant left due to intolerable or detrimental working conditions.

Iowa Admin. Code r. 871-24.25(18) 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:
>
> (18) The claimant left because of a dislike of the shift worked.
>
> (21) The claimant left because of dissatisfaction with the work environment.

The employer utilizes the billable hour. The use of the billable hour, the employer's business practices, and the work environment described during the hearing do not sound out of the ordinary from what an employee could expect in this type of industry. Although the administrative law judge believes the claimant sincerely felt ethically compromised by the employer's practices relating to the billable hour, the evidence does not show that the employer's practices were unlawful. Claimant has every right to choose not to work for EK Health Services due to her ethical concerns. In this case, the claimant clearly determined that her ethical concerns were too great to continue working for the employer.

Similarly, the evidence does not show that the employer's overtime model is unlawful. The employer had a clear policy regarding overtime pay. While it is unfortunate that claimant did not receive payment for the additional hours she reportedly worked, it is clear that she knew of the

employer's requirement to receive prior approval for overtime hours before working and/or reporting the same. The employer discouraged working overtime and took several steps to ensure its employees did not have to work overtime. The employer assigned claimant a care coordinator to assist her with her job duties. The employer provided claimant with a number of additional resources to help ensure that she was able to complete her daily tasks in a timely fashion. Alternatively, the employer reassured claimant that it was okay, and normal in this line of work, to roll tasks over to the next day. There is no evidence that claimant was ever reprimanded for failing to complete her job duties in a timely manner, or for not meeting her billable hour goals.

Claimant has not established that her leaving was for unlawful, intolerable, or detrimental working conditions as required by Iowa law. Instead, it is evident claimant voluntarily quit her position with the employer due to a dislike of the shift worked and dissatisfaction with the work environment. Therefore, benefits must be denied.

DECISION:

The March 30, 2021 (reference 01) unemployment insurance decision is AFFIRMED. The claimant voluntarily quit without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Michael J. Lunn
Administrative Law Judge
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June 30, 2021
Decision Dated and Mailed

mjl/kmj