

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RAYNISHA T EVANS

Claimant

APPEAL 21A-UI-03943-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC

Employer

OC: 09/13/20

Claimant: Appellant (1)

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

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Raynisha T Evans, the claimant/appellant filed an appeal from the January 22, 2021, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 1, 2021. Ms. Evans participated and testified. The employer did not register for the hearing and did not participate. Claimant's Exhibit A was admitted into evidence.

ISSUE:

Did Ms. Evans voluntarily 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: Ms. Evans began working for the employer in May 2019. She worked as a full-time over the road truck driver with a dedicated route to and from Riverside, CA to Minnesota. Ms. Evans' last day on the job was April 28, 2020. She resigned on May 7, 2020.

In March 2020, the United States declared a public health emergency because of the COVID 19 pandemic. In late April 2020, Ms. Evans began experiencing fatigue and chills and other symptoms associated with COVID-19 while on the road. When she returned to California on April 28, 2020, Ms. Evans contacted the Martin Luther King, Jr. Community Hospital in Chino Hills, California. A nurse told her to self-quarantine, which Ms. Evans did. Ms. Evans contacted the employer to ask how she should deal with the pandemic and being a truck driver. The employer told Ms. Evans that they did not know because the pandemic was new.

Ms. Evans symptoms got worse so she went to get tested for COVID-19 on May 4, 2020. Ms. Evans received a positive test result on May 6, 2020. Ms. Evans' daughter, age three and her grandfather, age 65, lived in the same household. By May 6, 2020, Ms. Evans daughter and her grandfather also were experiencing COVID-19 symptoms. Ms. Evans resigned on May 7, 2020 because of her own COVID-19 positive test result and because she needed to care for her daughter and her grandfather.

Ms. Evans' daughter and grandfather both tested positive for COVID-19 some days later. It took about one month for Ms. Evans' daughter to get better and it took about one-and-a-half months for her grandfather to get better. About two months after testing positive for COVID-19, Ms. Evans was evicted from her apartment and lost custody of her daughter. Ms. Evans did not contact the employer after her resignation to return to work.

Ms. Evans testified that the employer did not provide personal protective equipment (PPE) to employees, did not hold any safety meetings or have a plan for how drivers were to deal with the pandemic, and employees at the terminals in California and in Minnesota did not wear masks. Ms. Evans wore a mask, practiced safe distancing and used hand sanitizer often.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(1)(c) 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. But the individual shall not be disqualified if the department finds that:

(c) The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

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.

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).

In this case, Ms. Evans resigned because of her own COVID-19 diagnosis and because she needed to care for her daughter and grandfather because of their COVID-19 diagnoses. Since Ms. Evans did not resign necessarily and solely to care for her daughter and grandfather Iowa Code section 96.5(1)(c) does not apply to her situation. The administrative law judge is sympathetic to Ms. Evans' circumstances. However, since Ms. Evans offered and the employer accepted her resignation effective May 7, 2020, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The January 22, 2021, (reference 01) unemployment insurance decision is affirmed. Ms. Evans 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.



Daniel Zeno
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April 5, 2021

Decision Dated and Mailed

dz/kmj