

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JESSICA A BURTON**  
Claimant

**THE UNIVERSITY OF IOWA**  
Employer

**APPEAL NO. 19A-UI-02544-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/17/19**  
**Claimant: Appellant (2)**

Iowa Code § 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated March 12, 2019, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 11, 2019. Claimant participated. Employer participated by hearing representative Mary Eggenburg and witnesses Kristen McIntyre and Christine Glenn.

**ISSUE:**

The issue in this matter is whether claimant quit for good cause attributable to employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on February 21, 2019. Claimant sent in a letter of resignation on February 5, 2019 detailing her last day at work on February 21, 2019. Claimant then attempted to rescind her resignation days later, but employer accepted her original quit and the rescission was not allowed.

Claimant worked as an overnight sleep technician. One of the essential job duties is for employees to remain awake while on the job. Claimant had a co-worker in the sleep clinic who would sleep nearly every night while at work. Not only would the co-worker sleep, but she would also become very upset if awoken during her sleep. Claimant went to her supervisor with these complaints about her co-worker in February and again in April of 2018. Claimant stated that there were no changes in her co-worker's actions after the multiple complaints. In August, 2018 claimant met with the human resources head of her department and again strongly expressed her concerns. There were once again no changes that resulted in the co-worker's continual sleeping on the job.

In December, 2018 claimant again met with the human resources manager and her supervisor concerning her interactions with her co-worker. She detailed that her co-worker would get angry and throw things at claimant when she was awoken. Claimant detailed through photos and

many notes she'd taken about individual occurrences. Claimant was told at this meeting that she was obsessing about her co-worker and needed to focus instead on herself.

Claimant told of the possible dangers of having a person who was supposed to be overseeing those with sleeping difficulties sleeping herself. She also detailed that she believed that she'd secured another job at the time of her resignation letter. Claimant's resignation letter detailed the ongoing difficulties she'd had with her co-worker and her frustrations that employer had seemingly done nothing about the ongoing violation.

Employer admitted that they had a progressive disciplinary policy, and that the co-worker had never received more than a verbal reprimand, although employer had reason to know that this co-worker continued violating company policy for nearly a year by the time claimant quit. Employer did state that two days after claimant submitted her resignation they instituted a new policy whereby crew heads were tasked to ensure that sleep techs were not sleeping, upon addressing other matters.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because employer refused to follow its own policies and discipline a co-worker of claimant despite claimant's repeated alerts to employer concerning the activities of the co-worker.

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. EAB* 494 N.W.2d 660, 662 (Iowa 1993) (citing *Wiese v. IA Dept. 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 test of good faith." *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). "Common sense and prudence must be exercised in evaluating all of the circumstances that led to an employee's quit in order to attribute the cause for the termination." *Id.* The real circumstances shown here were that claimant tried over the course of a year to address safety concerns arising because a co-worker continually slept while at work in violation of company policies. Claimant was told that she was obsessing on the co-worker when she presented photos and detailed notes detailing the violations while the offender was not given even a written warning concerning consistently asleep at work. Said actions and lack of actions by employer constitute good cause for claimant's quit that is attributable to employer's actions.

**DECISION:**

The decision of the representative dated March 12, 2019, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

bab/scn