

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ANDREA T ESPOSITO
Claimant

APPEAL NO. 16A-UI-12558-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

OC: 10/30/16
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Andrea Esposito filed a timely appeal from the November 16, 2016, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits paid to her, based on an agency conclusion that Ms. Esposito had voluntarily quit on October 28, 2016 without good cause attributable to the employer in response to a reprimand. After due notice was issued, a hearing was held on December 12, 2016. Ms. Esposito participated. Kathy Miller represented the employer and presented additional testimony through Mindy Nolan, Lisa Swaney, Mary Eggers-Palmer and Alicia Wedeking. Exhibit A was received into evidence.

ISSUE:

Whether Ms. Esposito's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Andrea Esposito was employed by ABCM Corporation, d/b/a Rehabilitation Center of Allison, as a full-time Certified Nursing Assistant (CNA) from 2013 until October 31, 2016, when voluntarily quit. During the last five months of the employment, Ms. Esposito lived in Greene, roughly eight miles from the workplace in Allison. Toward the end of the employment, Ms. Esposito was without a car and relied upon coworkers for transportation to and from work. On October 27, Kathy Miller, Administrator, spoke with Ms. Esposito regarding her transportation situation. Ms. Miller asked Ms. Esposito about the status of her plans to get a new car. Ms. Miller told Ms. Esposito that the coworkers who were providing transportation to Ms. Esposito had the option of submit mileage reimbursement requests to the employer, that none had, but that the employer was concerned about liability for such requests. During the conversation, Ms. Miller spoke to Ms. Esposito about Ms. Esposito's status as a single parent. Ms. Miller told Ms. Esposito that she also was a single parent and that if she could summon the wherewithal to move forward, Ms. Esposito could do the same. Ms. Esposito misinterpreted the meeting as the employer harassing her concerning her transportation situation.

Ms. Esposito last performed work for the employer on October 28, 2016. At the end of her shift, Lisa Swaney, Co-Director of Nursing, summoned Ms. Esposito to a meeting to address recent

attendance issues. Ms. Miller was also present for the meeting. One of the purposes of the meeting was to present Ms. Miller with a written reprimand concerning her recent absences. Ms. Swaney reviewed the reprimand with Ms. Esposito and told Ms. Esposito that she was being placed on a probationary period. Ms. Swaney told Ms. Esposito that her next absence during the probationary period would result in a period of suspension and that another absence after that would result in discharge from the employment. Ms. Esposito's employment was not at that point in immediate jeopardy, but the employer was concerned that Ms. Esposito had missed three out of four Mondays in October. Ms. Swaney told Ms. Esposito that she would no longer be scheduled to work on Mondays. Ms. Esposito's work schedule since March 2014 had been 6:00 a.m. to 2:00 p.m. Monday through Friday and every other weekend. Ms. Esposito left the meeting concerned that her employment may end in a near future. Ms. Esposito did not wish to be discharged from the employment.

On October 31, 2016, Ms. Esposito called the workplace and spoke to the scheduler, Mindy Nolan. Ms. Esposito told Ms. Nolan that she was quitting the employment. Ms. Nolan requested that Ms. Esposito provide written notice. Ms. Esposito sent a couple text messages. Ms. Esposito did not return to the employment or make further contact with the employer.

After Ms. Esposito had moved to Greene at the end of May or beginning of June 2016, she began a second job at a care facility located in Greene. That employment was part-time, on-call (prn) only. Ms. Esposito had not accepted any other employment at the time she quit the employment at Rehabilitation Center of Allison. While Ms. Esposito asserts that Ms. Miller interfered with Ms. Esposito's ability to get additional hours through the second employment in Green, Ms. Miller did not do anything to interfere with the second, on-call employment.

Prior to leaving the employment at Rehabilitation Center of Allison, Ms. Esposito had some interpersonal conflicts with coworkers that she thought were rude. In at least one instance, the coworker's purported rudeness was merely the coworker's text message to Ms. Esposito that she thought it was unfair that other coworkers had to work beyond the end of their scheduled shifts when necessary, but that Ms. Esposito and one other CNA were not required to work late due to their childcare situation.

REASONING AND CONCLUSIONS OF LAW:

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.

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 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:

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

Iowa Admin. Code r. 871-24.25(22) 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:

(22) The claimant left because of a personality conflict with the supervisor.

Iowa Admin. Code r. 871-24.25(28) 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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The weight of the evidence in the record establishes a voluntary quit without good cause attributable to the employer. The weight of the evidence in the record establishes a quit in response to the October 28, 2016 reprimand for attendance. Quits for such reasons are presumed to be without good cause attributable to the employer. The weight of the evidence establishes that it was the disciplinary meeting, and Ms. Esposito's desire not to be discharged from the employment at some future point, that primarily factored in the discharge decision. To

the extent that the quit was based also on the meeting on October 27, 2016, the evidence fails to establish that the purpose of the meeting was to harass Ms. Esposito. The employer had a legitimate concern regarding Ms. Esposito's transportation arrangements for the eight-mile commute. The employer did not want to have to reimburse employees who provided transportation to Ms. Esposito for that transportation. At least one of Mr. Esposito's recent absences had involved a lack of transportation to the workplace and a need for the employer to provide the transportation. The employer's concern on October 27 about the transportation and the pep talk about the responsibilities of single-parenthood did not amount to harassment or to intolerable and/or detrimental working conditions. Likewise, the coworker's expression of displeasure with perceived preferential treatment did not rise to the level of intolerable and/or detrimental working conditions that would have prompted a reasonable person to leave the employment.

Because Ms. Esposito's voluntarily quit was without good cause attributable to the employer, she is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Esposito must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The November 16, 2016, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs