

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**RIVEA M KEEN**  
Claimant

**CARE INITIATIVES**  
Employer

**APPEAL 20A-UI-08621-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

On July 21, 2020, Rivea Keen (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated July 14, 2020 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on January 31, 2020, without good cause attributable to employer.

A telephone hearing was held on September 23, 2020. The parties were properly notified of the hearing. The claimant participated personally and was represented by attorney Theodore Wonio. Care Initiatives (employer/respondent) participated by Administrator Kellie Jimmerson and was represented by Hearing Representative Raul Ybanez. Director of Nursing Meagan Sager participated as a witness for employer.

Employer's exhibits 1-3 were admitted. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

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

Claimant began working for employer on December 19, 2018. Claimant worked for employer part time as a CNA. Sager was claimant's immediate supervisor. Claimant most recently performed worked for employer on January 14, 2020. Claimant came in for approximately an hour that evening to complete a training program. Claimant resigned on or about January 15, 2020.

Claimant resigned due to her work schedule conflicting with her schooling. Claimant was a full-time high-school student during the relevant timeframe. Beginning in January 2020, Sager began scheduling claimant on some Tuesdays and Thursdays. Prior to this, claimant had typically worked every other weekend during the school year, with some increased availability during the summer months. Claimant had previously worked on some weekdays. However, it is unclear whether those were days that she was scheduled to work or those were days she came in of her

own accord to complete paid training, which she was free to complete at any time. Prior to this time, claimant had most recently worked on a Thursday on May 30, 2019.

Sager began as the Director of Nursing on September 4, 2019. Notes from the prior DON indicated claimant was available Tuesdays, Thursdays, and every other weekend. Sager was aware claimant was a high school student but did not recall any discussion about her having limited availability. Claimant testified that at the time of hire she made clear that she was not available during school days and employer agreed to that arrangement. However, neither party provided any written record of such an arrangement, and neither Jimmerson nor Sager had any recollection of any such agreement.

Upon learning of her schedule conflicting with her schooling, claimant made no effort inform employer that the schedule was problematic or to request it be adjusted so she could continue her employment. Claimant simply sent a text message to Sager, inquiring as to how to submit a two-week notice of resignation. Sager did not respond via text but did attempt to call claimant on several occasions after that to discuss the matter. Sager was unable to reach claimant. Claimant reached out to the facility directly and was informed to submit a written two-week notice. She did so on or about January 15, 2020.

Claimant has worked elsewhere since resigning from employer. However, claimant was unsure how much she has earned in insured wages since resigning from employer.

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

For the reasons set forth below, the decision dated July 14, 2020 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on January 31, 2020, without good cause attributable to employer is AFFIRMED.

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

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.26 provides in relevant part:

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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

It is the duty of the administrative law judge, as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The administrative law judge finds that neither party provided particularly reliable information. For example, employer provided conflicting information regarding whether claimant had previously worked during the week and, if so, during what timeframe. Employer likely could have provided records of claimant's work history but did not do so. Employer also provided conflicting information on when claimant's separation was. Employer's testimony was also unclear as to what means of communication was appropriate for employees to use. Claimant's testimony was not particularly reliable either. Claimant often responded to questions by indicating that she could not recall the information requested. This calls into question the reliability of claimant's memory. Factual disputes were resolved as set forth above.

Employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried her burden of proving the voluntary leaving was for good cause attributable to employer.


Claimant resigned due to her work schedule conflicting with her schooling. Claimant had not typically worked on Tuesdays and Thursdays during the school year. However, there was no formal work contract or agreement which prohibited employer from scheduling her on these days. It is unclear why employer decided to begin scheduling claimant on those days during the school year. It would likely have been better for employer to speak with claimant prior to scheduling her for these shifts. For whatever reason it did not do so. Regardless, to the extent there existed some informal agreement, understanding, or course of conduct regarding claimant's scheduling, the administrative law judge finds that scheduling claimant for Tuesdays and Thursdays did not rise to the level of a willful breach of contract such that claimant's quitting was with good cause attributable to employer.

The administrative law judge finds the critical point here is claimant's failure to make any effort to preserve the employment relationship upon learning of her work schedule conflicting with her schooling. Claimant made no effort to inform employer that the schedule was problematic or to request it be adjusted so she could continue her employment. Claimant simply sent a text message to Sager, inquiring as to how to submit a two-week notice of resignation. Claimant then failed to respond to Sager's calls to discuss the issue. Claimant simply went to the facility and submitted a two-week notice. A reasonable person in claimant's position who wished to preserve the employment relationship would have brought the issue with the schedule to employer's attention and sought to resolve it rather than simply resigning without any further dialogue. The administrative law judge finds claimant's failure to bring the issue to employer's attention and give it an opportunity to resolve it renders her resignation without good cause attributable to employer.

Claimant has worked elsewhere since resigning from employer. However, claimant was unsure how much she has earned in insured wages since resigning from employer. The administrative law judge wishes to note that claimant may have requalified for benefits since the separation if she has earned wages for insured work equal to ten times her weekly benefit amount since the separation. The administrative law judge further wishes to note claimant may be eligible for Pandemic Unemployment Assistance (PUA). Further information on PUA and how to apply is set forth below.

**DECISION:**

The decision dated July 14, 2020 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on January 31, 2020, without good cause attributable to employer is **AFFIRMED**. Claimant's separation from employment was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
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September 30, 2020  
Decision Dated and Mailed

abd/mh

***Note to Claimant:***

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.