

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAREN K LEWIS
Claimant

NORDSTROM INC
Employer

APPEAL 21A-UI-08991-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/06/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On March 31, 2021, the claimant, Karen K. Lewis, filed an appeal from the March 23, 2021, (reference 05) unemployment insurance decision that denied benefits based on the determination that claimant quit work for personal reasons, without good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on May 26, 2021. Claimant participated personally. She also registered a witness to testify, but it was determined the witness's testimony was unnecessary, and the witness was not called. The employer, Nordstrom Inc., did not participate. Chief Administrative Law Judge Nicole Merrill was present on the line, but did not participate in the hearing. No exhibits were admitted.

ISSUE:

Did claimant quit with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 2, 2020. Claimant last worked as a full-time detailer reporting to her supervisor, Suzanne. Claimant was separated from employment on February 19, 2021, when she did not return to work after quarantining due to COVID-19 for a 10-day period.

Claimant worked in an open warehouse environment where only employees are permitted, as a general rule. When employees came into the building, their temperatures were not checked right away. Employees had to go through the locker rooms and cafeteria, then go upstairs before someone checked their temperature. Claimant was unaware of any general building sanitizing efforts made by the employer. If an employee of one area was diagnosed with COVID-19, the employer sent out an email to all of the employees in the area. When claimant was first hired, she was told that the employer would then shut down the area in which the ill employee worked to allow others in the area to quarantine. Claimant never saw such a shutdown occur. All employees wore masks while at work, but claimant had concerns about

employees' adherence to social distancing. She spoke with Suzanne on occasion about this issue. She reminded Suzanne that claimant expected her to distance herself from claimant, and informed Suzanne that she intended to tell other employees to observe social distancing, as well. She did not speak with anyone else in management about this issue.

On February 9, 2021, claimant became ill with symptoms of COVID-19. Employer told her to stay home and instructed her to self-quarantine for a period of 10 days. Claimant did not seek medical advice or a COVID-19 test during this time. At the end of 10 days, on February 19, 2021, Suzanne contacted claimant to inquire whether she planned to return to work. Claimant told her she did not feel safe with the employer's COVID-19 safety measures, particularly because claimant has a young son at home. Claimant did not attempt to return to work at the employer thereafter.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant quit 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). Claimant had an intention to quit and carried out that intention by tendering her written resignation. As such, 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). Claimant contends that she voluntarily quit due to intolerable or detrimental working conditions.

Iowa Admin. Code r. 871—24.26(4) 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:

- (4) The claimant left due to intolerable or detrimental working conditions.

As such, if claimant establishes that she left due to intolerable or detrimental working conditions, benefits would be allowed. Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447–78 (Iowa 1993), *Suluki v. Employment Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer

notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, 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 concluded that, because the intent-to-quit requirement was added to 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).

“Good cause attributable to the employer” does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988) (“[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith”); *Shontz v. Iowa Emp't Sec. Comm'n*, 248 N.W.2d 88, 91 (Iowa 1976) (benefits payable even though employer “free from fault”); *Raffety v. Iowa Emp't Sec. Comm'n*, 76 N.W.2d 787, 788 (Iowa 1956) (“The good cause attributable to the employer need not be based upon a fault or wrong of such employer.”). Good cause may be attributable to “the employment itself” rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788. Therefore, claimant was not required to give the employer any notice with regard to the alleged intolerable or detrimental working conditions prior to her quitting. However, claimant must prove that her working conditions were intolerable or detrimental.

Given the facts of this case, claimant’s working conditions do not rise to the level where a reasonable person would feel compelled to quit by refusing to return to employment after her quarantine period. As such, she has failed to prove that under the same circumstances a reasonable person would feel compelled to resign. See *O'Brien v. Emp't Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). Rather, the circumstances in this case seem to align with the conclusion that claimant was dissatisfied with the employer’s mitigation efforts during the COVID-19 pandemic. However, she has not demonstrated that the employer engaged in so few mitigation efforts that it created a dangerous or intolerable work environment for claimant. Claimant had good personal reasons to wish to protect herself and her son from becoming infected with COVID-19, but she has not demonstrated that the employer failed to mitigate the risk to its employees to such an extent that it rendered claimant’s working environment objectively intolerable or dangerous. Claimant has not demonstrated that she had a good cause reason attributable to the employer to justify her quit.

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 § 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 § 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.

As such, the claimant’s voluntary quitting was not for a good-cause reason attributable to the employer. Benefits must be denied.

DECISION:

The March 23, 2021, reference 05, unemployment insurance decision is affirmed. Claimant quit without good cause attributable to her employer. Unemployment insurance benefits are denied until claimant was worked in and earned wages for insured work equal to ten times her weekly benefit amount after her separation date, provided she is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

June 10, 2021
Decision Dated and Mailed

ar/kmj

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed or continue to be 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.