IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

JOY M BUSS Claimant **ABCM CORPORATION** Employer	**APPEAL 20A-UI-15466-DB-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/02/20** **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the November 4, 2020 (reference 02) unemployment insurance decision that denied benefits based upon her voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on January 25, 2021. The claimant, Joy M. Buss, participated personally. The employer, ABCM Corporation, participated through witnesses Marilyn Moser and Linsey Henry. Employer's Exhibit 1 was admitted. The administrative law judge took official notice of the claimant's administrative records. The hearing was consolidated with Appeal No. 20A-UI-15465-DB-T.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment on February 7, 1994. She worked full-time as a certified nursing assistant at the employer's nursing home. Her duties included caring for residents. Her last day physically worked on the job was July 19, 2020. Claimant was on vacation in Texas until August 1, 2020. Upon her return, she was required to quarantine due to the COVID 19 pandemic and she used her vacation leave to do so from August 3, 2020 through August 15, 2020. She earned vacation pay above her established weekly benefit amount, plus fifteen dollars for the week-ending August 8, 2020 and the week-ending August 15, 2020 but she did not report the earnings when she filed her weekly-continued claims for benefits.

On or about August 3, 2020, the claimant asked to be changed from full-time status to on call status with a start date of August 15, 2020. See Exhibit 1. As an on call worker, she was not guaranteed a certain number of working hours per week. She was never called in to work when her status changed to on call. On or about October 1, 2020, Ms. Moser sent the claimant, and several other workers, a text message reminding them to complete their required educational credits so that they would not be written up. See Exhibit 1. Upon receipt of the text message, the claimant texted Ms. Moser back telling her to "save your write up" and voluntarily quit her

employment with the employer. See Exhibit 1. Continued work was available if the claimant had not quit.

Claimant alleged that she was not working because she was refused to be given an N95 mask to work in by the employer. Prior to the claimant leaving for vacation in July of 2020 she was asked if she wanted to be fitted for an N95 mask to work in. The claimant told her supervisor, Linsey Henry, that she did not want to be fitted for an N95 mask. The employer had a policy in place that if a client was using a nebulizer, only a worker fitted with an N95 mask would be required to enter the room to assist the client. Therefore, claimant's exposure to COVID 19 would be limited if she was not wearing an N95 masks. Other COVID 19 policies were put into place by the employer which included but was not limited to two temperature checks of employees each shift; gowns, masks, and requiring workers to shower in and out of the COVID 19 unit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 via text message on October 1, 2020. 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. Employment 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. Employment 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 Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 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 (Iowa 1956). 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. Claimant was given the option to be fitted for an N95 mask but refused to do so. Claimant was not required to go into a client's room that was using a nebulizer at that time due to the fact that she would not be wearing an N95 mask. The employer also took other COVID 19 related precautions to reduce the claimant's exposure to the Coronavirus. As such, she has failed to prove that under the same circumstances a reasonable person would feel compelled to resign. *See O'Brien v. Employment 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 her work environment in general and was frustrated with receiving a potential write up. This is not a good cause reason attributable to the employer for claimant to have quit.

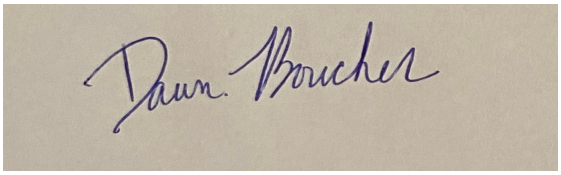
Iowa Admin. Code r. 871-24.25(21) provides:

> 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 November 4, 2020 (reference 02) unemployment insurance decision is affirmed. Claimant voluntarily quit her employment on October 1, 2020 without good cause attributable to the employer. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times her weekly benefit amount after her separation date, and provided she is otherwise eligible.



Dawn Boucher
Administrative Law Judge

February 10, 2021
Decision Dated and Mailed

db/kmj