

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
eab.iowa.gov**

SHAYLA ROOF

Claimant

and

THE ANTHEM COMPANIES INC

Employer

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HEARING NUMBER: 22B-UI-23684

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1

DECISION

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant was employed by The Anthem Companies, Inc. (Employer) as a full-time Long-term Services Assessor and Service Coordinator from February 2019 until September 10, 2021, when she voluntarily quit in lieu of vaccination or termination. The Claimant's work duties involved going to clients' homes to assess client eligibility for Medicaid waiver long-term care programs.

On July 26, 2021, the Employer issued an updated policy statement regarding COVID-19 vaccination requirements applicable to staff, including the Claimant. *See Exhibit C*. The employer advised that anyone entering its offices must be fully vaccinated and that the policy went into effect August 9 for field staff such as the Claimant.

On September 2, 2021, the employer issued a further vaccination policy statement. *See Exhibit D.* The updated policy statement required that “direct patient/member-facing” staff must be fully vaccinated by Friday, October 29, 2020 either via the Pfizer two-dose or Johnson & Johnson single dose vaccine. Failure to be vaccinated by October 29, 2020 (unless excused for religious or medical reasons) would mean “she will be considered to have resigned the position effective October 30...” *Exhibit D.* The Claimant had no wish to get vaccinated, and resigned in a letter dated September 8. The Employer’s policy allowed workers like the Claimant to receive weekly COVID testing in lieu of vaccination for the weeks prior to October 30, 2020. *See Exhibit D.*

REASONING AND CONCLUSIONS OF LAW:

Quit versus Discharge: Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits: Voluntary Quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Generally, a quit is defined to be “a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.” 871 IAC 24.1(113)(b). Furthermore, Iowa Administrative Code 871—24.25 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.

Since the Employer had the burden of proving disqualification the Employer had the burden of proving that a quit rather than a discharge has taken place. The Iowa Supreme Court has thus been explicit: “the employer has the burden of proving that a claimant’s departure from employment was voluntary.” *Irving v. Employment Appeal Bd.*, 883 NW 2d 179, 210 (Iowa 2016).

The rules of Iowa Workforce Development specify:

871—24.26 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:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

871 IAC 24.26(1). As we have found the Claimant faced a choice between quitting or being fired. It was clear at the time the Claimant quit that if she did not get vaccinated by October 29 she would be terminated. She quit. But she did so only because had she not quit then she would have been involuntarily separated as of October 30, 2021 unless she got vaccinated. This would then be a termination for refusal to get vaccinated, and so for our purposes we find that the Claimant quit in lieu of a discharge (or getting vaccinated). This is a termination by the Employer.

Effect of Discharge for Vaccine Refusal: Under Iowa Code §96.5A:

96.5A Refusal of COVID-19 vaccination — no disqualification.

Notwithstanding any other provision of this chapter to the contrary, an individual who is discharged from employment for refusing to receive a vaccination against COVID-19, as defined in section 686D.2, shall not be disqualified for benefits on account of such discharge.

The Claimant was forced to get vaccinated for COVID-19 by October 29, 2021 or else get fired the next day. Had the Claimant stayed on, but refused vaccination, she would have been fired as of October 30. This falls under Iowa Code §96.5A, and she is allowed benefits as of October 31, 2021 (this being the beginning of the next full benefit week).

Effect of Anticipatory Separation: Since the Claimant had a right to refuse the vaccination under the Employment Security Law, and since she intended to so refuse, it is clear that the October 30 deadline was, for her, an announced scheduled separation from employment. But the Claimant quit on September 8. She was forced to quit as of October 30. She was not forced to quit in September because she was not required to get vaccinated on pain of termination until October 29. The regulations address a similar situation:

Where the claimant voluntarily quit in advance of the announced scheduled layoff, the disqualification period will be from the last day worked to the date of the scheduled layoff. Benefits shall not be denied from the effective date of the scheduled layoff.

871 IAC 24.25(40); *see e.g. Taylor v. Kastim Corp.*, 21B-UI-00764 (EAB 4/23/21) (disqualifying but only for period between quit and the announced closing of the office). Under this provision we would find the period between September 8 and October 30 to be a voluntary period of unemployment, that is, the result of a voluntary leaving of employment. This is disqualifying unless good cause attributable to the Employer is shown. The Claimant must show good cause why she could not get the weekly tests between September 8 and October 30.

The Claimant asserts no religious basis for her *testing* objections, but rather says it is discriminatory to require her to do something she did not want to do. The ADA restricts the flow of employee medical information to employers, but allows disclosure of information, such as a medical test result, if it is consistent with business necessity. 42 U.S.C. § 12112(d) (“shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity”). Given that the Claimant would be face-to-face with those of fragile health we think the weekly requirement was consistent with business necessity. The Equal Employment Opportunity Commission, who administers the ADA, agrees. *See* <https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>; *Technical Assistance: What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, A.6 <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> (“Testing administered by employers consistent with current CDC guidance will meet the ADA’s ‘business necessity’ standard.”).

We appreciate that the Claimant objected to the testing. But employers routinely require workers to do things they may object to. This includes even some invasive things like installing an app on their phone to check in on the workplace time system, carrying a tracking device during the workday including during breaks, or taking a random drug test. In fact, the ADA exemption for business necessity points up that medical exams, like the “functional capacity exam” and the “fitness for duty exam,” are commonly imposed by employers. Such requirements are generally not good cause for quitting. “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. Iowa Dep’t 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 element of good faith.” *Wiese v. Iowa Dep’t of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) “[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination.” *Id.* Here given the understandable business reasons for requiring testing, plus the requirements generally in health care to take infection control precautions, we find that the Claimant has not established good cause for quitting when she did. The separation, however, is not disqualifying following when she would have been fired for being unvaccinated.

The Claimant did not file for benefits until September 26, 2021. The weeks before that date are thus not at issue. We disqualify the Claimant but only for the five weeks between September 26, 2021 and October 30, 2021.

DECISION:

The administrative law judge’s decision dated January 20, 2022 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was not separated from employment in a manner that would disqualify the Claimant from benefits for any week other than the five weeks between September 26, 2021 and October 30, 2021. Accordingly, the Claimant is allowed benefits after that October 30, 2021 provided the Claimant is otherwise eligible.

James M. Strohman

Ashley R. Koopmans

Myron R. Linn