

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

JANET M CONLAN
Claimant

HILLCREST FAMILY SERVICES
Employer

APPEAL NO. 23A-UI-00779-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/04/22
Claimant: Appellant (2)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On January 25, 2023, Janet Conlan (claimant) filed a timely appeal from the January 23, 2023 (reference 01) decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on November 24, 2022 without good cause attributable to the employer. After due notice was issued, a hearing was held on February 13, 2023. Claimant participated personally and was represented by attorney Zeke McCartney. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Claimant's marked exhibits, Exhibits 1 through 4, were received into evidence.

ISSUE:

Whether the claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

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

Janet Conlan (claimant) was employed by Hillcrest Family Services as a full-time Mental Health Tech until November 24, 2022, when she voluntarily quit. The claimant began her employment with Hillcrest in 2007. The claimant commenced her Mental Health Tech duties in August 2021 and started performing those duties on a full-time basis in May 2022. The claimant worked three 12-hour shifts a week at the employer's residential care facility. The facility houses 82 adult clients, ages 18 to 65. Most of those clients suffer from schizophrenia or bipolar disorder. Some residents are participants in the employer's drug treatment program.

In August 2021, a Hillcrest client physically assaulted the claimant when the claimant attempted to stop the assailant from assaulting another client. The claimant suffered a concussion and was subsequently diagnosed with Post Traumatic Stress Disorder (PTSD) connected with the assault ordeal. The claimant participated in therapy over the course of months to work on diminishing her work-related anxiety. The claimant's workplace injury gave rise to a worker's compensation claim.

By September 2022, the claimant had reached maximum medical improvement, but continued to suffer from PTSD connected with the August 2021 assault. In connection with a September 2022 neuropsychology consult, the provider confirmed the PTSD diagnosis, released the claimant to return to full work duty, but made the following recommendation:

We strongly recommend that Ms. Conlan not return to work as a patient care tech at Hillcrest. She has developed significant anxiety around this workplace and the work duties, and is not confident in her abilities. We recommend that she seek employment elsewhere. She is capable of full time work, but we recommend that she pursue that work somewhere besides Hillcrest.

Following the neuropsychology consult and recommendation, the claimant's attorney and the employer's attorney engaged in a discussion about possible alternative jobs at Hillcrest. On November 1, 2022, the employer offered the claimant a choice of two positions. The first offered position was Community Based Direct Service Professional at Hillcrest Supported Living. The position would include a Monday through Friday, day-shift work schedule. During this shift, the claimant would be the sole staff member on duty at a residence that housed five or six Hillcrest clients. The clients would be individuals suffering from the same or similar maladies as the clients housed at the residential care facility. The claimant declined the Community Based Direct Service Professional position out of concern for her safety. The second offered position was a part-time cook position at the residential care facility. The cook position would provide 30 hours of work per week. The cook position would include a \$7.00 an hour cut in pay, from \$19.00 to \$12.00. The claimant declined the cook position. The pay decrease was a factor in her decision. The employer did not identify any *suitable* positions.

The claimant's decision to give notice on November 24, 2022 that she was quitting the employment effective immediately followed an assault incident in the workplace four days earlier. As part of her duties, the claimant would escort about 50 residents to the dining room for snack. Pursuant to Hillcrest's protocol, a second staff member was supposed to accompany the claimant and the residents. On the date in question, the second staff member remained behind. The claimant attributes the second staff member's conduct to the employer not properly training new staff. While the claimant was alone with the many clients, a male client started choking another male client. The claimant had to address that situation without assistance, but was able to persuade the assailant to release the other client. The claimant reported the incident to the social worker per protocol and entered information concerning the assault into the employer's note taking system per protocol. The claimant submitted her quit notice after waiting for four days to hear whether the employer would be initiating an investigation. The employer did not respond.

The claimant also considered another incident in November 2022 wherein a client moved toward the claimant in an aggressive matter while stating "I'm going to fuck you up." The incident occurred in the middle of the night. The client was upset because he was out of cigarettes. Though there were two other staff members present when the client moved aggressively toward the claimant, neither stepped in to assist. The claimant had to move to room with a locked door to get away from the client. The claimant notified the social worker and a nurse regarding the incident.

The claimant also considered a middle-of-the-night incident in October 2022, wherein another client became verbally aggressive. In that instance the claimant locked herself in a client's room while she waited for the social worker to arrive to assist.

The claimant also considered another October 2022 incident wherein a client suffered a seizure and hit his head on the floor. The claimant attempted to address the situation on her own because no nurse or medical tech was available to assist. The claimant had no prior experience in dealing with seizures and was concerned for the safety of the client.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Code section 96.5(1)(d) 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:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Administrative Code rule 817-24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is

reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

When a claimant leaves employment due to unsafe working conditions, the quit is deemed to be with good cause attributable to the employer. Iowa Admin. Code r. 871-24.26(2).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 871-24.26(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).

The evidence in the record establishes a voluntary quit with good cause attributable to the employer. The employer did not participate in the appeal hearing and did not present any evidence to rebut the claimant's testimony and exhibits. The evidence in the record establishes unsafe work conditions that factored in the claimant's voluntary quit, including the incident four days before the quit wherein the claimant was left alone with about 50 clients and had to deal solo with one client assaulting another. The evidence establishes multiple instances wherein the claimant was unsafe in the workplace, the worst being the August 2021 incident wherein the claimant was assaulted. The employer's repeated failure to ensure safe working conditions through proper staffing and training created intolerable and detrimental conditions that would have prompted a reasonable person to leave the employment. The claimant's quit was upon the advice of a licensed and practicing physician. The PTSD that followed the August 2021 assault, coupled with the multiple instances of violence and threats of violence toward the end of the employment, made it necessary for the claimant to leave the employment to avoid serious danger to her mental health. Prior to quitting the employment, the claimant pursued alternative employment assignments with the employer, but the employer did not have a *suitable* alternative assignment for the claimant. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The January 23, 2023 (reference 01) decision is REVERSED. The claimant voluntarily quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.



James E. Timberland
Administrative Law Judge

February 22, 2023
Decision Dated and Mailed

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.