

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUDY O. PETERS

Claimant

DSM HEALTHCARE MANAGEMENT, LLC

Employer

APPEAL 20A-UI-11001-BH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/20

Claimant: Appellant (2)

Iowa Code section 96.5(1) – Voluntary Quit

Iowa Administrative Code rule 871-24.25 – Voluntary Quit Without Good Cause Attributable to the Employer

Iowa Administrative Code rule 871-24.26 – Voluntary Quit With Good Cause Attributable to the Employer

STATEMENT OF THE CASE:

The claimant, Judy O. Peters, appealed the September 1, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a finding Peters voluntarily quit her job with DSM Healthcare Management, LLC (DSM) without good cause attributable to the employer. The agency properly notified the parties of the appeal and hearing.

The undersigned presided over a telephone hearing on October 23, 2020. Peters participated personally and testified. DSM participated through business office manager Allison Goode, who testified.

ISSUES:

Was Peters's separation from employment with DSM a layoff, discharge for misconduct, or voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

DSM is a long-term care facility. DSM hired Peters on October 12, 2006. She worked full time as a dietary aide. Claimant voluntarily quit on May 14, 2020.

COVID-19 began spreading across the state and nation in the spring of 2020. The U.S. Centers for Disease Control and Prevention (CDC) and Iowa Department of Public Health (IDPH) have issued guidance to help mitigate the spread of the disease. Individuals with health conditions

and those age 65 and more are at an increased risk to have serious health issues or to die if they contract the disease.

DSM provides care at its facility to high-risk individuals. Consequently, DSM implemented policies and procedures to help reduce the risk posed to residents and staff by COVID-19. One of those was to wear a surgical mask while on the clock. This rule applied to Peters.

Peters has multiple preexisting health conditions impacting her cardiovascular system. Consequently, wearing a mask made it harder for Peters to breathe. Peters saw her doctor, who issued a note stating Peters could not wear a mask due to her health conditions. Peters gave a copy of the note to DSM.

Goode discussed the situation with Peters. DSM could not accommodate her request to not wear a mask due to the increased risk doing so would pose to residents and other staff. Goode gave Peters a week to think about what she wanted to do. Peters chose to voluntarily quit her job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes Peters voluntarily left employment with DSM without good cause attributable to the employer under the Iowa Employment Security Law, Iowa Code chapter 96.

Iowa Code section 96.5(1) disqualifies a claimant from benefits if the claimant quit she job without good cause attributable to the employer. The Iowa Supreme Court has held that good cause requires “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). Moreover, the court has advised that “common 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.*

According to the Iowa Supreme Court, 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). Good cause may be attributable to “the employment itself” rather than the employer personally and still satisfy the requirements of the Act. *E.g. Raffety v. Iowa Emp’t Sec. Comm’n*, 76 N.W.2d 787, 788 (Iowa 1956).

A burden-shifting framework is used to evaluate quit cases. Because an employer may not know why a claimant quit, the claimant has the initial burden to produce evidence suggesting the claimant is not disqualified from benefits under Iowa Code section 96.5(1) a through j and section 96.10. If the claimant produces such evidence, the employer has the burden to prove the claimant is disqualified from benefits under section 96.5(1).

Iowa Administrative Code rule 871-24.25 creates a presumption a claimant quit without good cause attributable to the employer in certain circumstances. Iowa Administrative Code rule 871-24.26 identifies reasons for quitting that are considered for good cause attributable to the employer. Under rule 871-24.26(6) states governs illness or injury and states:

- 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.

Here, the evidence shows that Peters had a preexisting health condition. She had no issue performing her job at DSM before COVID-19 required staff to wear masks. The mask aggravated Peters's condition. She obtained a doctor's note stating that she cannot work in her job if it requires her wearing a tight-fitting mask due to the strain it places on her heart and lungs. Peters provided the note to DSM, which could not accommodate her, so she quit.

For these reasons, the evidence establishes Peters quit for good cause attributable to the employer under Iowa Code section 96.5(1) and rule 871-24.26(6)(b). Benefits are allowed, provided Peters is otherwise eligible.

DECISION:

The September 1, 2020 (reference 01) unemployment insurance decision is reversed. Peters voluntarily left employment with good cause attributable to DSM. Benefits are allowed, provided she is otherwise eligible. All benefits withheld due to the September 1, 2020 (reference 01) decision shall be paid.



Ben Humphrey
Administrative Law Judge

November 5, 2020
Decision Dated and Mailed

bh/scn