

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CARLA N NETTO
Claimant

APPEAL 20A-UI-00779-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEDAR RAPIDS COMM SCHOOL DIST
Employer

OC: 12/29/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On January 27, 2020, Carla Netto (claimant) filed a timely appeal from the January 16, 2020 (reference 01) unemployment insurance decision that found she was not eligible for benefits.

A telephone hearing was held on February 11, 2020. The parties were properly notified of the hearing. The claimant participated personally. Cedar Rapids Comm School Dist (employer) participated by Hearing Representative Erin Bewley and HR Representative Brittany Carney. Claimant's friend Ann Warren was present for the hearing but did not participate.

Employer's Exhibit 1 was admitted. Claimant's Exhibits 1-3 were admitted.

ISSUE(S):

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

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

Claimant worked for employer as a full-time para-professional. In this position, she worked with students with disabilities in employer's preschool program. Claimant's first day of employment was October 26, 2009. The last day claimant worked on the job was April 26, 2019. Claimant's immediate supervisor was Shannon Kehoe. Claimant voluntarily quit on May 8, 2019.

Claimant notified Carney of her quitting. See Employer's Exhibit 1. Claimant did not provide employer with a reason for quitting at the time of her quitting. However, claimant quit because she believed she was going to be discharged and did not believe she could continue to do the job. This was due in part to the difficulty of working with the children in her classroom and due in part to a non-work-related injury, discussed more below.

Claimant was on a performance improvement plan at the time she quit. This was a six-week plan. Three weeks into the plan, on May 1, 2019, employer informed claimant during a meeting that

she was not satisfying the goals in the plan. Employer informed claimant that she still had three weeks to improve and was asked what other supports she needed to be successful. At that meeting, claimant indicated she was thinking about quitting, as she did not believe the job was a "good fit" for her anymore. Claimant felt she was being pushed out by employer and a "case" was being made to justify her discharge in the future. Claimant resigned via an email to Carney on May 8, 2019. Claimant did request to move to another position but employer informed her that was not an option. Employer had not told her she would be discharged if she did not quit, and continuing work was available to her had she not quit.

Claimant resigned in part because of an injury to her foot. The injury was not caused by her employment. However, the injury was at times aggravated by her employment. This was because she had to be on her feet at work and the children would sometimes step on her feet. See Claimant's Exhibits 2 & 3. Prior to resigning, claimant did not inform Carney or any other supervisory employee about this injury; request any kind of accommodation or leave to address the injury; or indicate that she may have to quit due to the injury. Claimant was not instructed by her physician to leave work due to her injury.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the January 16, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for benefits is AFFIRMED. Claimant is not eligible for benefits until she has earned wages for insured work equal to ten times her weekly benefit amount.

Iowa Code section 96.5(1)a 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 Admin. Code r. 871-24.25 provides in relevant part:

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. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 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:

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

Iowa Admin. Code r. 871-24.26 provides in relevant part:

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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

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

(6) 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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

Employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried her burden of proving the voluntary leaving was for good cause attributable to employer.

Claimant quit largely because her job performance was not to the satisfaction of the employer. However, employer had not requested the claimant to leave, and continued work was available. This reason for quitting is presumed to be without good cause, and the administrative law judge finds it was without good cause in this instance.

Claimant also quit in part because she did not feel she could do the job anymore, due to her injury and the aggravation working sometime caused that, as well as because of the difficulty of her work. However, claimant did not make employer aware that she may have to quit due to the injury or the difficulty of her work. Nor did she request any kind of accommodation or medical leave. Employer cannot address or correct a situation if it is unaware of it or that claimant may quit if it is not addressed. While a notice of intent to quit is not necessary in such a situation, the administrative law judge finds that a reasonable person would not find the working conditions in this case so intolerable or detrimental as to justify quitting with no notice to employer. Furthermore, claimant did not quit based on the advice of her physician; nor did she return to work once the medical situation had been resolved.

Finally, claimant was in the midst of a performance improvement plan, and employer was working with her to help her be successful in her employment. While the administrative law judge does not doubt that claimant's work was challenging, she had access to tools to assist her in being successful and still had several weeks in that plan. Claimant's decision to quit before that plan was completed and all efforts had been made to improve the situation renders her quit without good cause attributable to employer.

DECISION:

The January 16, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for benefits is AFFIRMED. Claimant is not eligible for benefits until she has earned wages for insured work equal to ten times her weekly benefit amount.

Andrew B. Duffelmeyer
Administrative Law Judge
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Decision Dated and Mailed

abd/scn