

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANDREA ERSKINE
Claimant

LIFE RX INC
Employer

APPEAL 21A-UI-07162-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/17/21
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions
Iowa Code § 96.5(1)d – Voluntary Leaving (Illness/Injury)

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 5, 2021, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on May 19, 2021. Claimant participated and testified. She was represented by Jon Geyer, attorney at law. Employer participated through Owner Jennifer Walker and Owner Patti Trenkamp.

ISSUE:

Was the separation 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 administrative law judge finds: Claimant was employed full-time as a pharmacist from November 18, 2019, until she was separated from employment on January 18, 2021, when she quit. The claimant worked an average of 37 hours per week. The claimant's immediate supervisor was Owner Patti Trenkamp and Owner Jennifer Walker.

On April 6, 2020, the claimant slipped on a floor mat at the front of the store which resulted in her left shoulder's rotator cuff being torn.

On August 8, 2020, the claimant underwent surgery on her left rotator cuff. The claimant was released to return to work on September 4, 2020.

At 12:00 p.m. on July 8, 2020, the claimant had a conversation with Ms. Trenkamp in her office regarding the nature of her injury. The claimant told Ms. Trenkamp that her physician had ordered her a sling for her injured shoulder. Ms. Trenkamp said that they ordered the sling off of Amazon's digital marketplace. Ms. Trenkamp said that if the claimant needed to use both of her arms in the performance of her duties then she should move the item to her left hand.

Ms. Trenkamp explained that the claimant's restrictions stated "limited use of left arm" rather than prohibiting her from using it at all.

At 1:15 p.m. on July 8, 2020, the claimant told Ms. Trenkamp that she could not do her job because she was experiencing severe arm pain. Ms. Trenkamp expressed she did not know the pain the claimant was experiencing was that severe and she asked the claimant to let her know if she experienced pain in the future. The claimant said she would let Ms. Trenkamp know if she experienced pain in the future. The claimant said she could not work without a sling. Ms. Trenkamp let the claimant stay away from work until the sling was shipped on July 10, 2020.

On January 8, 2021, the claimant had a conversation with Ms. Trenkamp at the counter where drugs are dispensed. Ms. Trenkamp was taking her lunch and she asked the claimant, "I need to step out" and asked if she needed assistance with going to the restroom. The claimant stated she did not need to go the restroom at the time. Ms. Trenkamp was shoulder to shoulder with the claimant when she had this conversation with her.

On January 14, 2021, the claimant had a conversation with Ms. Walker. Ms. Walker acknowledged the claimant's presence and offered assistance with going to the bathroom. The claimant replied that she did not need any help because she was wearing loose clothing. Ms. Walker clarified that she thought the claimant needed assistance due to her restrictions. The claimant reiterated that she would not need assistance and was wearing loose clothing.

On January 15, 2021, the Ms. Trenkamp corrected the claimant for using terms of endearment she used such as "honey" and "sweetie" in front of other staff and customers. The claimant had previously used these terms in the past and had not been corrected. Ms. Trenkamp was stern on that day, but she did not raise her voice. Ms. Trenkamp felt like it was important to correct the behavior because these terms of endearment are inappropriate for use in reference to strangers. The claimant was hurt because she felt like such a conversation should have occurred in a private. The claimant had a panic attack on that day given the circumstances. The claimant provided visit notes written by her physician, which confirm she had a severe panic attack on her way home and wanted to drive into a bridge. (Exhibit A)

On January 18, 2021, the claimant called Ms. Trenkamp and asked why she did not take her away from customers to correct her in a more private setting. Ms. Trenkamp explained that she did not feel like that was necessary because the conversation was not one that was punitive in nature. After this exchange, the claimant said she had a panic attack at work and was quitting because she could not endure this kind of treatment anymore.

The claimant stated these incidents occurred on an almost weekly basis, but she could not remember specific instances other than the ones listed above.

The claimant did not at any point state to Ms. Trenkamp, Ms. Williams or Human Resources Manager Susan Sanger that she would quit unless the employer accommodated her shoulder injury. The claimant did not contact Ms. Sanger regarding her concerns with how Ms. Trenkamp and Ms. Williams addressed her out on the floor rather than a private setting. The claimant did tell some of the technicians she felt like she was being harassed by Ms. Trenkamp.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code section 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.

Iowa Admin. Code r. 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. 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:

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

(28) The claimant left after being reprimanded.

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.

Iowa Admin. Code r. 871-24.26(6)b 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:

(6) Separation because of illness, injury, or pregnancy.

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.

Work-Related Medical

An individual who voluntarily leaves their employment due to an alleged work-related illness or injury must first give notice to the employer of the anticipated reasons for quitting in order to give the employer an opportunity to remedy the situation or offer an accommodation. *Suluki v. Employment Appeal Board*, 503 N.W.2d 402 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. *Polley v. Gopher Bearing Company*, 478 N.W.2d 775 (Minn. App. 1991).

While the claimant's work injury had some bearing on the treatment she received that she claims precipitated her resignation, she specifically denied the employer's refusal to accommodate her work-related injury resulted in her resignation. Furthermore, inasmuch as the claimant did not state to the employer that she would resign if she was not accommodated, this theory for relief is unavailing, even if it was asserted.

Intolerable Working Conditions

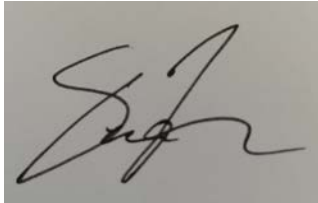
Unlike quits asserted to be due to work-related injuries, an employee is not required to complain about the reasons for their resignation prior to resigning if they contend their work environment is objectively intolerable. *Compare Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *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) with *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005) (concluding that because the intent-to-quit requirement was added to Iowa Admin. Code r. 871-24.26(6)(b) but not Iowa Admin. Code r. 871-24.26(4), an employee is not required to state they will quit).

The 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). 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). The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

In this case, the claimant cannot show that an average person would find the circumstances she described intolerable. While the administrative law judge is sympathetic to the embarrassment she felt during these conversations, they do not rise to the level of severity required to show her work environment was objectively intolerable. While Ms. Trenkamp and Ms. Walker may have been more discreet in these conversations, they would not prompt most employees to resign and face the prospects of not having continuing work. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The March 5, 2021, (reference 01), decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is centered on a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

May 27, 2021
Decision Dated and Mailed

smn/scn