

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**ROBERT O BURGIN**  
Claimant

**APPEAL NO. 14A-UI-04926-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALEGENT HEALTH**  
Employer

**OC: 04/13/14**  
**Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Alegent Health filed a timely appeal from a representative's decision dated May 5, 2014, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on June 2, 2014. Claimant participated. The employer participated by Mr. Thomas Kuiper, Hearing Representative, and witnesses: Ms. Jennifer Smith, Ms. Chris Daley, and Ms. Threasa Powers. Claimant's Exhibits One and Two were received into evidence.

**ISSUE:**

The issue is whether the claimant left employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Robert Burgin was employed by Alegent Health from April 15, 2010 until April 16, 2013 when he voluntarily quit employment. Mr. Burgin was employed as a full-time infection prevention specialist and was assigned to work at the employer's Mercy Hospital Council Bluffs location. Mr. Burgin was paid by salary. His immediate supervisor was Ms. Chris Daley.

Mr. Burgin resigned his position with the captioned employer effective April 16, 2013 because of dissatisfaction with a decision made by the hospital to not inform two past patients of potential unexpected clinical outcomes from surgeries they underwent at the Mercy Hospital facility in December 2012. Mr. Burgin believed that because instruments used in the surgeries were determined to be "dirty," the patients risked infection from blood borne pathogens on the surgical instruments. Mr. Burgin made several attempts to obtain permission to notify the patients so that their medical well-being could be monitored, however, the employer concluded that the risks of infection after the fact were minimal and concluded that the circumstances did not meet the criteria that required disclosure of unexpected clinical outcomes to the patients.

During his efforts to have a decision not to notify the patients reversed, Mr. Burgin contacted a number of highly placed management officials in Alegent Health and the treating physicians.

The claimant also went to his supervisor, Ms. Daley, about the matter after a decision had been made by the disclosure support team not to notify the patients. Ms. Daley attempted to convince the claimant to accept the decision not to notify emphasizing Mr. Burgin's need to be a "team player." The claimant was urged to accept the decision and told, "If you continue, we both know where this is going."

Because the claimant's job was to identify and prevent infection and to advocate for patients, Mr. Burgin believed that his ethical responsibilities were being compromised. The claimant took Ms. Daley's statements as veiled threats to discharge him if he continued to press for patient notification.

After leaving his employment with Alegant Health, Mr. Burgin engaged in self-employment as a means of livelihood, attempting to expand his previous part-time work in the field into full-time employment and did not immediately file a claim for unemployment insurance benefits.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause attributable to the employer. It does.

Iowa Code § 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.

In voluntary leaving cases, the claimant has the burden of establishing good cause attributable to the employer for leaving his or her employment. See Iowa Code section 96.6(2). The evidence establishes that Mr. Burgin left his employment with the captioned employer after making repeated attempts to have a decision not to notify patients of possible infection overturned. The claimant reasonably believed based upon the hospital's principles of ethics obligation and its policy on disclosure of unexpected clinical outcomes that two patients should have been notified by the employer that instruments used in their surgeries were not sterile and might have contained blood borne pathogens. In addition to his belief that his employment and ethical obligations were being compromised, the claimant also believed that the employer was attempting to exert pressure on him to accept the decision that he did not agree with and believed was contrary to the hospital's disclosure policies.

Based upon numerous conversations that the claimant had with his immediate supervisor, the employer was in general terms aware that Mr. Burgin had strong convictions about the matter and might leave employment because of it. Although the claimant's supervisor may not have intended to exert pressure on the claimant to accept the decision that he did not agree with, Mr. Burgin reasonably interpreted her statement as being a veiled threat to discharge him, if he did not agree. While Mr. Burgin may have referenced the possibility of self-employment, the administrative law judge concludes that the claimant did not leave his employment with Alegant Health because he intended to start his own business. The administrative law judge concludes that the claimant left his employment because of a viable disagreement with the employer's

interpretation of its own disclosure of unexpected clinical outcomes policy and because he felt intimidated to stop his activities on behalf of the patients. For these reasons the administrative law judge concludes that the claimant has sustained its burden of proof in establishing that he left employment with good cause attributable to the employer. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated May 5, 2014, reference 01, is affirmed. The claimant left employment with good cause attributable to the employer. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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