

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HOLLY N SMITH
Claimant

CITY OF PELLA
Employer

APPEAL 20A-UI-12987-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/30/20
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 12, 2020, (reference 01) unemployment insurance decision that denied benefits based upon a determination that she voluntarily quit her employment. The parties were properly notified of the hearing. A telephone hearing was held on December 15, 2020. The claimant, Holly N. Smith, participated personally with her attorney Channing Dutton. The employer did not participate. Claimant's Exhibits A-E were admitted.

ISSUES:

Did the claimant voluntarily quit employment with good cause attributable to the employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a communications specialist from March 13, 2006, until this employment ended on August 17, 2020, when she was discharged. Claimant's job duties included dispatching police and fire services and handling booking and incarceration of female inmates.

On June 29, 2020, claimant underwent back surgery resulting from a work-related injury. After her surgery, claimant's medical provider noted she was showing signs of drop foot and sent her for physical therapy. The medical provider indicated an expected return-to-work date of August 10, 2020. Claimant continued to have problems with her back and leg so she saw her workers compensation doctor who referred her to her family doctor.

On August 13, 2020, employer notified claimant that she had failed to return to work on August 10, 2020, despite having been cleared to do so and had not requested any additional leave. (Exhibit A). The employer noted that if claimant did not request additional leave or return to work by August 17, 2020, employer would consider her to have abandoned her position. Claimant notified employer that on August 10, 2020, her family doctor ordered her to continue with physical therapy and she had a follow up appointment with her doctor on September 1,

2020. Her family doctor provided a note to employer on August 13, 2020, listing claimant's lifting restrictions of 50 pounds occasionally, 20 pounds frequently, or 10 pounds continuously for the following three weeks.

On August 17, 2020, employer offered claimant to return to work in the float shift schedule where she would not be required to engage in lifting beyond her restrictions. If claimant did not return to the position on August 24, 2020, she would be considered to have abandoned the position. (Ex. C) Claimant responded that she did not accept the accommodated position as she had made the decision to relocate her family to northwest Iowa since she did not plan to return to work due to the August 13 letter.

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:

Claimant was aware that if she did not return to work or request additional leave she would be considered to have voluntarily left her employment. As such, this case must be analyzed as a voluntary quit case and not a discharge case.

Iowa Admin. Code r. 871-24.25(2) 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 § 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 § 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:

(2) The claimant moved to a different locality.

Here, employer offered claimant an opportunity to request additional leave, followed by offering her a position which would accommodate her restrictions. However, rather than following up with employer regarding accommodating the lifting restrictions, claimant decided to relocate her family to northwest Iowa. 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 October 12, 2020, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Stephanie Adkisson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

December 30, 2020
Decision Dated and Mailed

sa/scn