

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAREN M NYBERG
Claimant

THE IOWA CLINIC PC
Employer

APPEAL 20A-UI-15866-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/19/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntarily Quit
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Karen M Nyberg, the claimant/appellant, filed an appeal from the November 19, 2020, (reference 04) unemployment insurance decision that denied her benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 28, 2021. Ms. Nyberg participated and testified. The employer participated through LaTrice Wissink, human resources generalist.

ISSUE:

Did Ms. Nyberg voluntarily 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: Ms. Nyberg began working for the employer on August 31, 2020. She worked as a full-time certified medical assistant and her schedule was 8:00 a.m. – 4:30 p.m. Her last day at work was September 18, 2020.

The employer's attendance policy provides that an employee who is a No-Call/No-Show for two consecutive days is deemed to have voluntarily quit. The policy was readily available to all employees, including Ms. Nyberg, via the employer's intranet.

On Friday, September 18, Ms Nyberg left work early due being sick. She called in sick on Monday, September 21. On Tuesday, September 22, Ms. Nyberg was a No-Call/No-Show. Ms. Nyberg was a No-Call/No-Show again on Wednesday, September 23. At 8:43 a.m. on September 23, the employer's human resources staff emailed Ms. Nyberg asking her to contact them by responding to the email or calling the staff person's cell phone because Ms. Nyberg hadn't been at work for two consecutive days and hadn't called in either day. The employer also reached out to Ms. Nyberg's emergency contact to try to be in touch with Ms. Nyberg. At 11:50 a.m. the employer's human resources staff emailed Ms. Nyberg again to let her know that the employer deemed her to have abandoned her job and voluntarily quit effective September 18, 2020. At 1:16 p.m. Ms. Nyberg emailed the employer back to say that she had planned to

come into work at some point that week to voluntarily quit because the job was not a good fit for her. The employer sent Ms. Nyberg a termination letter the same day informing her that because of her two consecutive days of No-Call/No-Shows she is deemed to have voluntarily quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Nyberg's separation from the employment was with 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 (4) 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:

....

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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).

In this case, Ms. Nyberg didn't go to work or call in to work on September 22 and September 23. The employer then terminated her employment based on its policy. The presumption in law is that three days of No-Call/No-Shows is a voluntary quit without good cause attributable to the employer. Here, the employer presumed a lower bar than the law does and terminated Ms. Nyberg's employment. However, the evidence in this matter does not show that the employer was aware of any intention by Ms. Nyberg to quit, which is a necessary component of voluntarily quitting. Benefits are allowed.

DECISION:

The November 19, 2020, (reference 04) unemployment insurance decision is reversed. Ms. Nyberg's separation from employment was attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Daniel Zeno
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

February 12, 2021
Decision Dated and Mailed

dz/ol