

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARY E GILBERT
Claimant

MOSAIC
Employer

APPEAL 20A-UI-04876-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/01/19
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

Claimant filed an appeal from the May 21, 2020 (reference 08) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 24, 2020, at 3:00 p.m. Claimant participated. Employer did not participate. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a voluntary quit without good cause attributable to employer.
Whether claimant was overpaid benefits.
Whether claimant is eligible for Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time direct support professional from March 23, 2020 until her employment with Mosaic ended on April 6, 2020. Claimant worked with dependent adults in a residential setting. Claimant became concerned with employer's lack of response to Covid-19. Employer was not restricting access to the house to only those employees who had a work-related reason to be there. Employer had not increased cleaning and sanitizing practices. Employer was not providing personal protective equipment (PPE) to employees. Employer was not taking the temperatures of employees entering the house. On April 5, 2020, claimant addressed her concerns with employer and asked to wear her own face mask at work. Employer told claimant that safety measures were not instituted because they were not mandatory and that she could not wear a face mask at work because it may upset or frighten the residents. On April 6, 2020, claimant resigned effective immediately due to her concerns regarding Covid-19 and employer's lack of safety measures.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit with good cause attributable to employer. Benefits are allowed provided claimant is otherwise eligible.

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). 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). 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).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988). Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the Act. *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956).

Iowa Admin Code r. 871-24.26(2), (4) provide:

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:

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

In this case, claimant quit because of her concerns about Covid-19 and employer's lack of response to those concerns. A reasonable person would have believed that claimant's working conditions were unsafe, intolerable and detrimental to the claimant due to employer's refusal to allow claimant to use personal protective equipment and employer's refusal or failure to institute basic safety protocols to protect claimant and others from infection. As such, claimant's reason for quitting constitutes good cause attributable to employer. Benefits are allowed, provided the claimant is otherwise eligible. Because claimant's separation was not disqualifying, the issue of overpayment is moot. Because claimant is eligible for regular unemployment insurance benefits, she is also eligible for Federal Pandemic Unemployment Compensation. See PL 116-136 § 2104(B).

DECISION:

The May 21, 2020 (reference 08) unemployment insurance decision is reversed. Claimant voluntarily quit with good cause attributable to employer. Benefits are allowed provided claimant is otherwise eligible. The issue of overpayment is moot. Claimant is eligible for Federal Pandemic Unemployment Compensation.



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July 7, 2020
Decision Dated and Mailed

acw/mh