

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BREANN R MOORE
Claimant

QHC FORT DODGE VILLA LLC
Employer

APPEAL 21A-UI-00176-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/23/20
Claimant: Appellant (5)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On November 18, 2020, Breann Moore (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated November 12, 2020 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on June 29, 2020 for reasons not caused by employer and in order to accept other employment but she did not obtain other employment.

A telephone hearing was held on February 3, 2021. The parties were properly notified of the hearing. The claimant participated personally. QHC Fort Dodge Villa LLC (employer/respondent) participated by Administrator Lisa Eastman. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant able to and available for work?
- II. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer in April 2016. Claimant last performed work for employer on August 24, 2020. Claimant was employed as a full-time floor nurse and was working the night shift at that time. Claimant put in a two-week notice of resignation on August 12, 2020. She was not able to complete the two-week notice because she contracted COVID-19 and as such was too ill to work.

Claimant had another job lined up prior to her resignation. However, that job was no longer available to claimant by the time she was able to return to work. As such, she did not perform work for that employer. She was able to work again beginning September 4, 2020 and continuing after that time. Claimant continued to be generally available for work, although she was no longer able to work overnight due to childcare issues. She was able to work during the daytime.

Claimant resigned in part due to her dissatisfaction with employer. Around the time of her resignation, the number of residents increased from approximately 77 to 107. This created more work for claimant. Employer did bring in additional nurses and aides to assist with the new residents. Claimant was also frustrated by what she felt was a lack of clear communication with employer. Finally, claimant was frustrated by difficulty she had with getting medical gloves. Additional medical gloves were often in a locked area during the night shift, meaning claimant had to ask to get those. Claimant was able to get gloves when she needed them, but she did not think it should have been that difficult.

As of the date of hearing, claimant had filed a claim for benefits each week from the benefit week ending August 29, 2020 and continuing through the benefit week ending January 30, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated November 12, 2020 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on June 29, 2020 is MODIFIED with no change in effect.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Code section 96.5(1)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 in relevant part:

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:

- (3) The claimant left to seek other employment but did not secure employment.
- (21) The claimant left because of dissatisfaction with the work environment.

Iowa Admin. Code r. 871-24.26 provides in relevant part:

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:

- (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.
- (2) The claimant left due to unsafe working conditions.
- (3) The claimant left due to unlawful working conditions.
- (4) The claimant left due to intolerable or detrimental working conditions.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee

complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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 administrative law judge finds claimant was able to and available for work from the benefit week ending September 12, 2020 and continuing to present. She was not able to and available for work and therefore not eligible for benefits in the benefit weeks ending August 29, 2020 and September 5, 2020, as she was too ill to work at that time.

Employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried her burden of proving the voluntary leaving was for good cause attributable to employer. Benefits must therefore be denied.

Claimant's separation from employment occurred on August 26, 2020. Claimant separated in order to accept another job but did not secure other employment. She also left in part because of dissatisfaction with the work environment. The administrative law judge is sympathetic to claimant's frustration with the work environment. However, the issues claimant identified do not rise to the level of being unsafe, unlawful, or so intolerable or detrimental as to justify resignation. As such, the separation from employment was disqualifying and benefits must be denied.

DECISION:

The decision dated November 12, 2020 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on June 29, 2020 is MODIFIED with no change in effect.

The administrative law judge finds claimant was able to and available for work from the benefit week ending September 12, 2020 and continuing to present. She was not able to and available for work and therefore not eligible for benefits in the benefit weeks ending August 29, 2020 and September 5, 2020, as she was too ill to work at that time.

The administrative law judge further finds claimant's separation from employment occurred on August 26, 2020 and was without good cause attributable to employer. Claimant's separation was therefore disqualifying.

Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



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

February 17, 2021
Decision Dated and Mailed

abd/scn

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.