

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KIMBERLY D CASEY SIMON**  
Claimant

**APPEAL 21A-UI-16647-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOOD SAMARITAN SOCIETY INC**  
Employer

**OC: 04/25/21  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

On July 29, 2021, the claimant/appellant filed an appeal from the July 23, 2021, (reference 02) unemployment insurance decision that disallowed benefits based on claimant voluntarily quitting for personal reasons. The parties were properly notified about the hearing. A telephone hearing was held on September 21, 2021. Claimant participated at the hearing. Employer did not register a number to participate in the hearing prior to the hearing and therefore did not participate in the hearing. Administrative notice was taken of the claimant's unemployment records.

**ISSUES:**

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in October 2020. Claimant last worked as a part-time care taker. Claimant was separated from employment on November 30, 2020, when she voluntarily quit.

Claimant was hired as a caretaker that travels to clients' houses. When claimant was hired the employer asked claimant the furthest she would be willing to travel to go to a client's residence. Claimant informed the employer that she was willing to drive 20 minutes and the employer agreed. Over the course of her employment the claimant was scheduled to travel between 45 minutes and an hour to care for clients. Part of claimant's job required her to drive a client places away from their residence. After one week claimant was no longer paid mileage for driving to client's residences or taking them places. Claimant complained to her supervisor, Catrina, but the schedule did not improve and claimant was required to travel further than she agreed when she began the job.

During one of claimant's shift claimant went to a client's house and the client notified her that he was ill. The claimant notified the employer and informed them that the client was sick and was concerned it was COVID. The employer told the claimant it was not COVID and instructed claimant to continue working.

On November 7, 2020, claimant became ill with COVID. The employer required claimant to quarantine for fourteen days. Claimant was having symptoms of a runny nose, fatigue, loss of smell, loss of taste. Claimant's husband also contracted COVID and was very ill and claimant took care of him during this time period. Claimant returned to work on November 27, 2020.

On November 30, 2020, claimant informed Catrina that she quit. Claimant was unhappy with the miles that she was driving and claimant was unhappy that she was exposed to COVID and the employer required her to continue taking care of the ill client.

On December 1, 2020, claimant had an interview with a new employer. Claimant accepted the position and began working for the employer on January 1, 2021.

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

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment with good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.26(1) provides:

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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A change to the terms of hire must be substantial in order to allow benefits. In this case, claimant agreed to drive 20 minutes to a client's residence. The employer expanded the claimant's schedule to include clients that lived 45 minutes to an hour away. Claimant was also lead to believe she would be able to get paid mileage. The claimant received mileage for a week and then the employer no longer paid mileage. Claimant incurred a greater cost because she was travelling distances that were over double what she agreed to when she was hired. Claimant has established that the change in the distance that she was expected

to travel for clients was a substantial change to the contract of hire. Claimant has met the burden of proof to show she quit with good cause attributable to the employer.

Next it must be determined if claimant was able to work and available for work. For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work beginning November 7, 2020 through November 25, 2020.

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 Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Claimant testified that she was ill with COVID from November 7, 2020 through November 25, 2020. Since claimant was ill she is disqualified from benefits for those days. After that time claimant was able to work and available to work.

**DECISION:**

The July 23, 2021, (reference 02) unemployment insurance decision is reversed. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits withheld on this basis shall be paid.

The claimant was not able to work and available for work effective November 7, 2020 through November 25, 2020. Benefits are denied for that time period.

A handwritten signature in black ink that reads "Carly Smith". The signature is fluid and cursive, with a horizontal line extending from the end of the name.

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Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

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September 23, 2021  
Decision Dated and Mailed

cs/kmj