

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JENNIFER K GREEN**  
Claimant

**MERCY HEALTH SERVICES—IOWA CORP**  
Employer

**APPEAL 19A-UI-05396-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/02/19**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Admin. Code r. 871-24.22(2)j(2) – Failure to Return from Leave of Absence

**STATEMENT OF THE CASE:**

On July 5, 2019, the claimant filed an appeal from the June 24, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for failure to follow instructions. The parties were properly notified of the hearing. A telephonic hearing was held on August 5, 2019. The claimant, Jennifer K. Green, participated. The employer, Mercy Health Services – Iowa Corporation, participated through witnesses Beckie Wahlberg, Employee Relations Consultant; Deb Steecker, Payroll Manager; and Erin Boomsma, Benefits Coordinator; and attorney Jennifer Pierce represented the employer. Claimant's Exhibits A and B and Employer's Exhibits A through H was received and admitted into the record. The administrative law judge took official notice of the administrative record.

Exhibit B admitted over objection; address and phone number redacted.

**ISSUE:**

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 began working for Mercy Health Services on September 11, 2017. Claimant was employed full-time with the employer, most recently as an accountant. Claimant's employment with Mercy Health Services ended on June 10, 2019, when she was discharged for failing to return from a leave of absence.

On March 20, 2019, claimant went on continuous FMLA-protected medical leave. Claimant initially provided a doctor's note clearing her to return effective May 20, 2019. (Employer's Exhibit B) Then, on May 20, claimant provided a second doctor's note clearing her to return to work effective May 21, 2019. (Employer's Exhibit C) The employer expected claimant to return effective May 21.

Claimant failed to return on May 21, 2019, as scheduled. She texted the employer that day to let them know she would not be in and she anticipated returning the next day. On May 22,

claimant again texted the employer to let them know she would not be at work that day. On May 23, claimant texted the employer and stated, "FMLA will not be in today." The employer was struggling, as it had expected claimant to fill her assigned shifts beginning on May 21, 2019. Therefore, management began reaching out to claimant to try and figure out what was happening.

On May 30, 2019, claimant sent Boomsma an email stating she needed to extend her leave of absence. (Exhibit E) Following this email, claimant and Boomsma had a telephone conversation. During this conversation, Boomsma agreed to provide claimant leave of absence paperwork. Claimant was made aware that her FMLA-protected leave was exhausted, so any additional leave of absence she received would not be a job-protected leave of absence.

On June 5, 2019, claimant had a telephone meeting scheduled with Boomsma and Wahlberg to discuss her current status. Claimant canceled that meeting and asked to meet the following day. Wahlberg sent claimant an email in response on June 5, 2019. Wahlberg told claimant to come to Human Resources on June 6 at 3:00 p.m., and to provide a return to work update and a doctor's note from her appointment at 11:00 a.m. that day. (Employer's Exhibit F4) Claimant balked at this request and let Wahlberg know she would attend the meeting via telephone.

On June 6, 2019, Wahlberg emailed claimant in the morning and requested her completed leave of absence paperwork with her doctor's information included. (Exhibit F1) Wahlberg explained that they would not need to have a meeting that afternoon if claimant provided the requested paperwork. Claimant went to the doctor as scheduled on June 6, but she did not have her doctor prepare any leave of absence paperwork. Claimant explained that the doctor charged money for completing the paperwork, and she was not interested in pursuing a leave of absence that would not be job-protected.

On June 7, 2019, claimant emailed Vice President of Human Resources Julie Anfinson. Claimant told Anfinson she could not pick up her paperwork until Monday, June 10. (Claimant's Exhibit A) Claimant also detailed some issues she had at work, including disparities in application of the attendance policy and concerns she had with her manager, and concerns with how the employer handled her leave of absence request. (Claimant's Exhibit A) Claimant ended the email with the following statement: "After a discussion with my doctor returning to the work environment in the Finance department is not in my best interest given my medical condition. Therefore, I will not be filling out the leave of absence form." (Claimant's Exhibit A) Claimant never returned to work following her March 20, 2019, leave of absence.

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

For the reasons that follow, the administrative law judge concludes claimant quit her employment when she failed to return from a leave of absence. Benefits are withheld.

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(6)b provides:

The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

*b. Employment related separation.* The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

Claimant contends she left her employment in order to protect and preserve her health. While claimant established through testimony that she was experiencing recurring vomiting, she has not sufficiently proven that this was due to her employment. The doctor's notes in the record indicate that claimant's physicians had cleared her to return to the work environment. This evidence contradicts claimant's statement that her doctor advised her to quit. There is not sufficient evidence in the record to support a finding that claimant was compelled to leave because of a work-related health condition.

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:

- (21) The claimant left because of dissatisfaction with the work environment.
- (22) The claimant left because of a personality conflict with the supervisor.

Iowa Admin. Code r. 871-24.22(2)(1) and (2) provides:

Benefit 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.

...

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment

for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

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). In this case, claimant left her employment rather than returning to work or asking to extend her leave of absence. Claimant described a work environment where the attendance policy was not always consistently enforced. While this is problematic and cause for concern, this is not sufficiently egregious to justify quitting employment. Claimant also struggled in her relationship with her supervisor. While her leave of absences issues could have been handled more smoothly, perhaps, nothing about the employer's actions was illegal or intolerable such that claimant would have been compelled to quit.

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). Claimant was given the opportunity to return to work or to submit paperwork requesting additional leave. Claimant did neither of these. Instead, claimant emailed the employer and stated she would not be returning. The evidence in the record does not support a finding that claimant quit with good cause attributable to the employer. Benefits are withheld.

**DECISION:**

The June 24, 2019, (reference 01) unemployment insurance decision is affirmed. Claimant separated from employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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