

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRISTIN PULLINS

Claimant

APPEAL 21A-UI-10504-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MONTROSE HEALTH CENTER

OPERATIONS

Employer

OC: 02/28/21

Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quit

Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 29, 2021, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on June 30, 2021. The claimant participated and testified. The employer did not participate. Official notice was taken of the agency records.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary 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:

The claimant, Kristin Pullins, was employed full-time as a registered charge nurse for the employer, Montrose Health Center Operations, from August 1, 2020, and was separated from employment on March 5, 2021, when she quit. The claimant's immediate supervisor was Director of Nursing Amy Derr.

The claimant had worked for the employer's predecessor from June 2018 until January 2020. During this term of employment, two nurses were assigned to work the floor at any given time. After the employer assumed ownership, it reduced staffing down to one nurse on staff, which was at the core of many of the claimant's specific concerns outlined below. Generally, the claimant could only perform so many tasks during her shift. This staffing reduction essentially doubled her workload.

In late-January 2021, the claimant was assigned to work as a floor nurse. One resident had stroke-like symptoms in his gait as he walked around 5:00 p.m. Ms. Derr told the claimant and other staff that the resident would have to wait until 6:00 p.m. when the night nurse reported for duty. The claimant treated the resident because she believes leaving the resident without

treatment given those symptoms for an hour was not safe. The claimant believes this incident could have impacted her license.

In February 2021, Ms. Derr received a report regarding an allegation of abuse on a Friday. Ms. Derr did not report this allegation of abuse to the Iowa Department of Human Services until the following Monday. The claimant filed a complaint with the Iowa Board of Nursing against Ms. Derr due to this incident.

In February 2021, a patient did not want to get out of bed. Two floor nurses decided they would force the patient out of bed. The claimant filed a complaint with the Iowa Board of Nursing against these two nurses.

In early to mid-February 2021, the claimant reported her concerns regarding the employer's current staffing levels in several different conversations. Ms. Derr and Administrator Mallory Hymes promised to increase staffing, but nothing really happened. During one of these conversations, Ms. Hymes said, "Go find a job. You'll come crying back in two weeks."

On February 20, 2021, the claimant was assigned to care for 36 residents. There were three residents who fell that day. The claimant felt like this placed her nursing license in jeopardy because she was required to perform neurological checks on each patient within particular intervals to prevent further traumatic brain injury. The claimant was also required to perform other palliative care such as documenting bruising and skin tears in the community's population.

On February 26, 2021, the claimant submitted her resignation to Ms. Derr and Ms. Hymes effective March 27, 2021. The claimant gave the names of four other nurses that resigned in the week preceding February 26, 2021.

On March 1, 2021, the claimant accepted a self-contracting job from Veteran's Evaluations Service. The claimant does not receive insured wages from this employer.

On March 5, 2021, Ms. Hymes and Ms. Derr called the claimant in to meet with them. They said that they would accept the claimant's resignation effective for that day. The claimant wanted to finish out her one month notice.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was 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.

The claimant had an intention to quit and carried out that intention by tendering a written resignation. As such, 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).

“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)(“[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith”); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer “free from fault”); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)(“The good cause attributable to the employer need not be based upon a fault or wrong of such employer.”). Good cause may be attributable to “the employment itself” rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956).

The claimant contends that she voluntarily quit due to intolerable, unsafe and unlawful working conditions. As such, if claimant establishes that she left due to intolerable, unsafe and unlawful working conditions, benefits would be allowed.

Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

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

- (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.

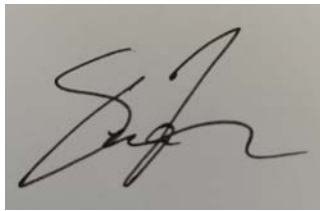
The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). In this case, a reasonable person would have believed that claimant's working conditions were unsafe, intolerable and detrimental to the claimant due to the lack of safety procedures provided to employees to perform the job and the employer's guidelines that failed to properly protect her from infection. As such, the claimant's voluntary quitting was for a good-cause reason attributable to the employer according to Iowa law. Benefits are allowed, provided the claimant is otherwise eligible.

The 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).

A reasonable person would find the claimant's working conditions intolerable. The claimant credibly described working conditions in which she feared she could not provide adequate care to all the employer's residents. The claimant also credibly testified to other incidents occurring at the facility that a reasonable employee could find as unlawful and unsafe. Benefits are granted.

DECISION:

The March 29, 2021, (reference 01) unemployment insurance decision is reversed. The claimant voluntarily quit with good cause attributable to her employer. Benefits are granted, provided she is otherwise eligible.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

July 8, 2021
Decision Dated and Mailed

smn/scn