

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KHARIA A EPPS**

Claimant

**APPEAL 19A-UI-06519-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SELECT MEDICAL CORPORATION**

Employer

**OC: 07/07/19**

**Claimant: Appellant (5)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

On August 17, 2019, Kharia A. Epps (claimant) filed an appeal from the August 7, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit employment with Select Medical Corporation (employer) due to pregnancy which does not constitute good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on September 11, 2019. The claimant participated personally. The employer participated through HR Director Jennie Patkova and was represented by Susan Chmelovsky. No exhibits were admitted into the record. During the hearing the parties waived notice on the issue of whether the claimant was able to and available for work effective July 7, 2019.

**ISSUES:**

Did the claimant voluntarily leave employment with good cause attributable to employer or did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Is the claimant able to work, available for work, and actively and earnestly seeking work effective July 7, 2019?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Medical Support Specialist beginning on June 1, 2018, and her last day worked was March 15, 2019. The claimant went on medical leave due to pregnancy at that time. She was placed on a leave of absence. The claimant was medically released to work without restrictions on or about May 25.

The claimant notified HR Director Jennie Patkova that she had been released to return to work but asked for additional leave. The claimant's baby had just been released from the neonatal intensive care unit and she wanted bonding time. Patkova agreed as the claimant was now eligible for job protected leave under the Family Medical Leave Act (FMLA).

In mid-June, the claimant notified Patkowa that she needed to move to the state of Oregon for personal reasons related to her fiancé's child. She intended to move by the end of July or beginning of August. Patkowa asked the claimant if she planned to return to her position in Iowa at the end of her leave and the claimant said she would not be returning. Patkowa advised the claimant she needed to apply for positions in Oregon and gave her the contact information for the recruiter. She also placed the claimant on an extended leave of absence through August 11, so she would remain an active employee in the hopes it would help her obtain a job in the new state.

The claimant continued to seek jobs in Oregon with the employer. She has not moved because she has not found a job. Toward the end of July, the claimant contacted her former supervisor to tell him she had not yet acquired a job in Oregon. He instructed her that there were no open positions at the facility and she needed to talk to Patkowa because he was no longer her supervisor. The claimant did not ask Patkowa about any employment opportunities in Iowa. On August 11, the claimant's employment ended as agreed.

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

- 1. Is the claimant able to work, available for work, and actively and earnestly seeking work effective July 7, 2019?*

For the reasons that follow, the administrative law judge concludes the claimant was not able to and available for work from July 7, 2019 through the week ending August 10, 2019. Benefits are denied.

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(2) provides, in relevant part:

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.

- (2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area

in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(10) provides:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

An individual claiming benefits has the burden of proof that she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant requested a leave of absence through August 11 to spend time with her newborn child and search for work in another state. The claimant was voluntarily unemployed and is not considered able to and available for work. Benefits are denied from July 7 through August 10, 2019.

*II. On August 11, 2019, did the claimant voluntarily leave employment with good cause attributable to employer or did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?*

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily quit employment without good cause attributable to the employer. Benefits are denied.

Iowa Code section 96.5 provides, in relevant part:

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.

...

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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:

...

(2) The claimant moved to a different locality

(3) The claimant left to seek other employment but did not secure employment.

...

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

...

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

...

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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. The burden of proof rests with the employer to show that the claimant voluntarily left her employment. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). 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). It 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). Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case, the claimant notified the employer of her intention to leave at the end of July or beginning of August. She expressed that overt intent by seeking employment solely in Oregon where she had planned to move. The claimant's employment voluntarily ended on August 11 which was the agreed upon end date. The employer has met the burden of proof to establish that the claimant voluntarily quit her employment.

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).

In this case, the claimant put the employer on notice that she needed to leave and move to another state for personal reasons. She knew that a transfer was not guaranteed and she would need to be hired by the employer in the other state. While the claimant's decision to leave may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied effective August 11, 2019.

**DECISION:**

The August 7, 2019, reference 01, unemployment insurance decision is modified with no change in effect. The claimant was not available for work from July 7, 2019 through August 10, 2019 because she was on a voluntary leave of absence. Benefits are denied through the week ending August 10, 2019.

The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld effective August 11, 2019 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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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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