

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TERI B EVERSON
Claimant

LINN MAR COMMUNITY SCHOOL DISTRICT
Employer

APPEAL NO. 14A-UI-12174-GT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/15/13
Claimant: Respondent (1)**

Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated November 20, 2014, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 15, 2014. Claimant participated. Employer participated by Phil Miller, Human Resources Generalist. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant submitted a written resignation on November 3, 2014 with an effective date of November 7, 2014.

Claimant was working as a student aide and was assigned to assist students with autism. She received training and instructions on how to deal with children with those needs, but she had never worked with the students she was assigned to assist prior to beginning employment.

Claimant began having problems being able to work with one of the students in September of 2014. The student was large and strong, and she would hit, scratch, and pinch claimant. Claimant told employer about the problems she was having and requested to be assigned to a different student.

Claimant was ultimately assaulted and physically attacked by the student in October of 2014. Claimant requested additional training, and to be reassigned to another student. Claimant explained that she was being physically harmed by the student, and that she was not capable of defending herself. Claimant's requests were denied.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because she was being physically assault and injured at work.

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(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:

(4) The claimant left due to intolerable or detrimental working conditions.

Individuals who leave their employment due to disparate treatment are considered to have left work due to intolerable or detrimental working conditions and their leaving is deemed to be for good cause attributable to the employer. The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Services*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 1993).

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

In this case it was reasonable for claimant to voluntarily leave employment. She was being physically injured, and she was not experienced enough and/or physically capable of defending herself from the physically assaultive behavior.

DECISION:

The decision of the representative dated November 20, 2014, reference 02, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/pjs