

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

AMBER N ROERDEN
Claimant

ALDI INC
Employer

APPEAL NO. 21A-UI-01980-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 15, 2020, reference 03, decision that allowed benefits to the claimant, provided she met all other eligibility requirements, and that held the employer's account could be charged, based on the deputy's conclusion that the claimant voluntarily quit on August 8, 2020 due to detrimental working conditions. After due notice was issued, a hearing was held on February 25, 2021. The claimant, Amber Roerden, participated. Thomas Kuiper of Equifax represented the employer and presented testimony through Lindsay Randklev. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant, which record reflects that no regular benefits have been disbursed in connection with the March 29, 2020 original claim. The administrative law judge took official notice of the April 28, 2020, reference 01, decision that disqualified the claimant for regular benefits in connection with an October 10, 2019 voluntary quit from employment with St. Luke's Methodist Hospital. The administrative law judge took official notice of the August 3, 2020 Assessment for PUA Benefits that allowed \$328.00 in weekly PUA benefits to the claimant for the period beginning March 29, 2020.

ISSUE:

Whether the claimant's voluntary quit was for 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 was employed by Aldi, Inc. as a part-time cashier. The claimant began the employment on June 16, 2020. The claimant worked 25 to 30 hours per week. The claimant was assigned to the Aldi's store on Edgebrook Drive in Cedar Rapids. Store Manager Mike May was the claimant's supervisor. Mr. May reports to District Manager Lindsay Randklev.

The claimant last performed work for the employer on August 8, 2020. Prior to the claimant's next scheduled shift, the derecho occurred on August 10, 2020. The derecho caused the Aldi's store to lose power for a week. On or about August 12, 2020, Mr. May telephoned the claimant and told her that there was not much for her to do while the store remained without power and

that he would be back in touch with her. The claimant was in the process of changing phone numbers and provided Mr. May with her updated number during the contact on August 12.

The Aldi's store reopened for business on August 17, 2020. The employer thereafter made multiple unsuccessful attempts to reach the claimant. The claimant had decided not to continue in the employment. The claimant advises that she was experiencing anxiety, and that she was concerned for her safety in light of what she perceived as lax enforcement of the employer's COVID-19 mask wearing policy. The employer did daily temperature checks of employees and required all employees to wear a mask on the sales floor. The employer had one employee who was unable to wear a mask due to a medical condition. The employer provided that employee with a face shield and that employee wore the face shield. The employer did not strictly enforce the mask requirement in the back room, in the break room, in the office or outside, but expected employees to socially distance under those circumstances. The claimant was concerned about bringing COVID-19 home to her significant other, who has multiple disabilities that place that person at increased risk in connection with COVID-19.

The employer posted a corporate hotline number in the workplace that the claimant could have used to raise her concern about the mask policy. The claimant had not perused the posting and did not use the number. The claimant was familiar with the district manager, but did not make an attempt to contact the district manager with her concern regarding lax enforcement of the mask policy.

On September 11, 2020, the district manager sent an email message to the claimant's email address of record. The employer stated that the employer had made several attempts to reach the claimant and would assume the claimant quit the employment if the employer did not hear back from the claimant by September 12, 2020. The claimant did not respond to the email message. The email message was not returned to the employer as undeliverable.

On October 8, 2020, the claimant commenced trying to contact the employer. The claimant had been away from the employment for a couple months. The claimant called, left voicemail messages and emailed. The claimant apologized for the manner in which she had left the employment. The claimant stated that she had been dealing with many personal issues at the time. The claimant did not inquire about returning to the employment. The district manager responded on October 12, 2020, when she returned from vacation. The employer sent the claimant paystubs and that concluded the contact between the parties.

The claimant established an original claim for benefits that was effective March 29, 2020 and an additional claim that was effective October 4, 2020. The claimant has not received regular benefits in connection with the claim. This employer is not a base period employer in connection with the claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Admin. Code r. 871-24.26(2) and (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.

...

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

With quits due to intolerable and detrimental working conditions, the test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

The weight of the evidence establishes a voluntary quit without good cause attributable to the employer. The evidence fails to establish any significant deviation in the workplace from evolving CDC protocol. The employer took daily temperatures and required employees to wear masks when it was not possible to socially distance. The claimant could have raised her concerns regarding her perception that the employer was not adhering to adequate COVID-19 protocols, but elected not to do that and thereby denied the employer a reasonable opportunity to address her concerns. The evidence fails to establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to leave the employment. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits. Because there were not benefits disbursed subsequent to the separation, there is not overpayment issue to address.

DECISION:

The December 15, 2020, reference 03, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.



James E. Timberland
Administrative Law Judge

May 3, 2021
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>.