

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SHERYL MUMM**  
Claimant

**ARAMARK CORPORATION**  
Employer

**APPEAL 20A-UI-07329-J1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/23/20**  
**Claimant: APPELLANT (2)**

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Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

On June 30, 2020, the claimant filed an appeal from the June 25, 2020, (reference 01) unemployment insurance decision that denied benefits based on voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on August 5, 2020. Claimant participated and was represented by attorney Patrick Took. Employer participated through Clista O'Hara, Food Services Director. Exhibits A through D were admitted into the record.

**ISSUE:**

Did claimant quit her employment with good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 6, 2019. Claimant last worked as a full-time kitchen aid. Claimant was separated from employment on February 15, 2020 when the employer decided claimant was a No Call/No Show for five days ending on February 15, 2020.

The employer, Aramark Corporation, has a contract to provide food services to the Pottawatomie County Jail. Claimant was hired to work the morning shift that started at 5:00 a.m. Claimant would work in preparing food and cleaning. Ms. O'Hara started working for the employer in October 2019. Ms. O'Hara said that she went over the employer's attendance policies, including the 3-day consecutive voluntary quit policy with all staff in October 2019. Ms. O'Hara said that claimant should have received the policy manual when she was hired. Ms. O'Hara said that claimant's last day claimant was physically at work was Saturday February 8, 2020. Claimant had Sunday and Monday off. Claimant was scheduled to work on February 11, 2020. Claimant called the office number two hours before her starting time and left a message that she was sick and was not going to be able to work. Claimant called two hours before her shift on February 12, 2020 and left a message that she was still ill and was going to see a doctor if she was not feeling better the next day. (Ex. A) Ms. O'Hara said that claimant should have called her cell phone rather than the office phone to leave a message as no one was in the office when claimant called. Ms. O'Hara asked another worker, Debra (no last name provided) to take over claimant's shift until Ms. O'Hara figured out the claimant's status. Ms. O'Hara said claimant failed to call in from

Tuesday February 11, 2020 through Friday February 15, 2020. Ms. O'Hara said she tried to contact claimant via phone but got no response. Ms. O'Hara said she considered claimant terminated as of February 15, 2020 for violation of the 3-day consecutive No Call/No Show policy. Ms. O'Hara testified that she received an email for the employer's Human Resources Department on February 14, 2020. The Human Resources Department received an email from the claimant on that day. Ms. O'Hara said the email from claimant sent to the Human Resources Department was complaining of favoritism in the work. Ms. O'Hara testified that she considered the claimant was not coming back since claimant was complaining to the Human Resources Department rather than her. Ms. O'Hara agreed that the claimant pointed out in October 2019 there was a large amount of black mold covering surfaces that the employees were around. Ms. O'Hara put in a work order with the county to have the area cleaned. Ms. O'Hara testified that the work area was substantially better in February 2020 than October 2019. Ms. O'Hara agreed that Exhibits B, C and D that shows black mold on wall, sinks and cabinets was accurate at the time claimant was working in February 2020. (Ex. B, C and D) Ms. O'Hara agreed that claimant had complained concerning her exposure to mold in October 2019 and in February 2020. Claimant wore a mask due to the mold, which Ms. O'Hara knew that claimant wore it due to mold exposure.

Claimant testified that she believed she was following the proper protocol to call two hours before her shift to the office phoned. Claimant call the office phone two hours before her shift on February 11 and 12, 2020 and left a message she could not come into work due to illness. On February 12, 2020 she left a message that she would be going to the doctor on February 13, 2020. (Ex. A) Claimant testified she spoke to three of her co-workers on February 12, 2020, who said that she had been taken off the schedule and was terminated. The claimant did not call any of these employees to support this assertion. Claimant sent an email to the Human Resources Department on February 14, 2020. Claimant testified that in her email she complained of favoritism. She also complained of the black mold and requested a transfer to a different work site. Claimant received no response for the Human Resources Department or Ms. O'Hara to this email.

Claimant credible testified she experienced significant health issues die to the black mold she was exposed to a work. Claimant testified she is still receiving treatment from specialists due to her mold exposure. Claimant said she wore a mask at work due to the black mold and complained of the condition to her employer all the time. On February 5, 2020 claimant complained to the CEO of the employer when he saw her at work with a mask.

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

Iowa Admin. Code r. 871-24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The first issue to determine is whether claimant violated the 3-day consecutive No Call/No Show policy. The record does not support a violation of the 3-day consecutive No Call/No Show policy. Claimant called on February 11, and 12, 2020. Claimant contacted the Human Resources Department on February 14, 202 and complained of her mold exposure and requested a transfer. There was not a 3-day period of No/Call/No Show. The evidence is that claimant contacted the employer's phone at the office. While the employer asserted that that was incorrect for the claimant to do so, the employer provided no policy or information that was provided to claimant to do something different. Many answering systems are programmed to roll over to other numbers or can be accessed by other authorized persons with a password. Claimant calling was not unreasonable. In any event claimant contacted the Human Resources Department on February 14, 2020 about her health and job issues. Claimant was not a No Call/No Show.

The second issue is whether claimant had good cause to quit her employment. While claimant testified she believed she was terminated because of the calls from her co-workers on February 12, 2020. I do not find it reasonable for claimant to rely upon such unverified information. She did not prove she was terminated on February 12, 2020.

I do find that claimant has proven that her working conditions were unsafe and intolerable and detrimental.

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.

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

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).

Claimant consistently complained of her exposure to black mold. The employer acknowledged that the black mold is still present at the work site. The pictures show significant mold and that is after the work site was cleaned up. The employer was willing to allow the claimant to be exposed to unhealthy conditions. The claimant provided notice to the employer and the employer did not reduce the hazard so it was safe for the claimant to work. A reasonable person under these conditions would find the conditions to be unsafe and detrimental. I find claimant had good cause for quitting her employment.

There was no indication in the record as to whether a claim was filed for workers' compensation benefits due to her exposure to the mold. Both unemployment law and workers' compensation law prohibit receiving simultaneous indemnity and unemployment benefits.

**DECISION:**

**Regular Unemployment Insurance Benefits Under State Law**

The June 25, 2020, (reference 01) unemployment insurance decision is reversed. Benefits are awarded provided she is otherwise eligible.



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James F. Elliott  
Administrative Law Judge

August 11, 2020  
Decision Dated and Mailed

je/mh