

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRENDA S FEICK
Claimant

BCP WINTERSET, LLC
Employer

APPEAL 21A-UI-06833-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/03/21
Claimant: Respondent (5)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On March 5, 2021, BCP Winterset, LLC (employer/respondent) filed an appeal from the February 23, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was discharged on January 4, 2021 without a showing of misconduct.

A telephone hearing was held on May 14, 2021. The parties were properly notified of the hearing. Employer participated by Executive Director Dwalah Lehman and HR Brenda Leach and was represented by Hearing Rep. Natalie Olds. Brenda Feick (claimant/respondent) participated personally.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time certified dietary manager. Claimant's first day of employment was August 27, 2019. The last day claimant worked on the job was December 23, 2020. Claimant's immediate supervisor was Lehman. Claimant separated from employment on January 4, 2021. Claimant resigned at that time.

Claimant resigned after learning a coworker in her area had tested positive for COVID-19 but was continuing to work. Claimant contacted Lehman on January 2, 2021 to discuss her concern about this. Lehman confirmed a coworker had tested positive but that the coworker would continue working. Lehman told claimant that CDC guidelines allowed the coworker to continue working despite the positive test, as the coworker was asymptomatic and was wearing proper PPE. The administrative law judge makes no finding as to whether CDC guidelines make such an allowance.

Claimant has health conditions which make her particularly susceptible to COVID-19. Claimant told Lehman that protecting herself from getting COVID-19 was more important than her job and asked for time off to consider whether she could continue working there. Lehman denied the request for time off due to staffing concerns. Claimant did not appear for work as scheduled on January 4, 2021. When claimant did not appear, employer contacted claimant to see if she would be in on that day. Claimant confirmed she would not be and effectively resigned at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the February 23, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was discharged on January 4, 2021 without a showing of misconduct is MODIFIED with no change in effect.

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

Iowa Code section 96.5(1)a 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.

Iowa Admin. Code r. 871-24.26 provides in relevant part:

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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected

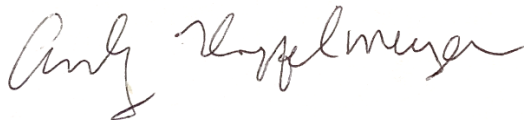
misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

The administrative law judge finds claimant has carried her burden of proving the voluntary leaving was for good cause attributable to employer. A reasonable person would find being required to work in close proximity to someone who had recently tested positive for COVID-19 to be so unsafe, intolerable, or detrimental as to justify resignation, even assuming *arguendo* that CDC guidelines allowed for the coworker to continue working in the circumstances. This is particularly true here, where claimant raised her concerns with employer prior to resigning and employer took no action to address the concerns.

Benefits are therefore allowed, provided claimant is otherwise eligible. The appealed decision is modified solely to reflect that the separation from employment was a resignation rather than a discharge.

DECISION:

The February 23, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was discharged on January 4, 2021 without a showing of misconduct is MODIFIED with no change in effect. Claimant's resignation was with good cause attributable to employer and the separation from employment was therefore not disqualifying. Benefits are allowed, provided claimant is otherwise eligible.



Andrew B. Duffelmeyer
Administrative Law Judge
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May 26, 2021
Decision Dated and Mailed

abd/scn