

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CYNTHIA E KNAPP
Claimant

KWIK TRIP INC
Employer

APPEAL 21A-UI-13653-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/04/21
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On June 7, 2021, claimant, Cynthia E. Knapp, filed an appeal from the June 3, 2021, reference 01, unemployment insurance decision that denied benefits based upon the determination that claimant voluntarily quit employment with the employer, Kwik Trip, Inc., without good cause attributable to the employer. The parties were properly notified about the hearing held by telephone on July 27, 2021. The claimant participated personally. The employer participated through Store Leader Brian Mayer.

ISSUE:

Did the claimant quit employment without 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 part-time as a guest service leader and safety champion beginning on April 23, 2012, and was separated from employment on July 6, 2020, when she resigned.

Claimant has medical conditions that make her breathing difficult. The COVID-19 pandemic presented a risk to claimant. Additionally, claimant's doctor wrote her a note indicating that she should not wear masks because they further restrict her breathing, and that she should not be working. The employer was allowing employees with underlying health conditions to take leave during the early days of the pandemic. Claimant took leave after April 3, 2020.

Around the time she resigned, Mayer told claimant that she would need to either return to the store for at least one shift per week or resign. Claimant had not yet been fully vaccinated against COVID-19 and still could not wear masks to protect herself. Accordingly, she resigned. Claimant's doctor had not released her to return to work as of the date of her hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code § 96.5(1)d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871—24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The court in *Gilmore v. Emp't Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement added to rule 871—24.26(6)(b), the provision addressing work-related health problems. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Claimant has not demonstrated that her condition is work related. Additionally, she had not been released to return to work by a physician, offered her services to the employer, and been refused work by the employer at the time she resigned. The employer testified that continuing work was available for claimant had she been able to return. While claimant's leaving 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 are denied.

DECISION:

The June 3, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld 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.



Alexis D. Rowe
Administrative Law Judge

August 2, 2021
Decision Dated and Mailed

ar/kmj