

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ANNE WAGNER
Claimant

APPEAL NO. 22A-UI-04175-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LINCARE INC
Employer

OC: 01/16/22
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On February 7, 2022, Anne Wagner (claimant) filed a timely appeal from the February 1, 2022 (reference 01) decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on January 14, 2022 without good cause attributable to the employer. After due notice was issued, a hearing started on May 10, 2022 and concluded on May 13, 2022. Claimant participated. Gilda Slomka of ADP/Equifax represented the employer and presented testimony through Doug McBride. Exhibits A through G were received into evidence. The administrative law judge took official notice of the quarter wage reports (WAGE-A). The administrative law judge took official notice of information available to the public via www.cdc.gov.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment or voluntary quit without good cause attributable to the employer.
Whether the claimant was discharged for refusing COVID-19 vaccination.

FINDINGS OF FACT:

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

Anne Wagner (claimant) was employed by Lincare, Inc. as a full-time sales representative from 2009 until January 14, 2022, when she voluntarily quit. The claimant's duties involved selling respirator products, primarily to assisted living facilities, medical clinics, and hospitals. During the last years of the employment, the claimant's sales position transitioned from one where the claimant was out in her assigned territory meeting with clients and prospective clients to one where the claimant conducted most of her sales work from an office in Waterloo. The claimant compensation included a \$24,000.00 annual base salary plus a sales commission. According to mandatory quarterly wage reports the employer made to Iowa Workforce Development, the employer paid the claimant \$45,656.00 in total compensation for 2021. See the WAGE-A record. From the start of the employment, the claimant participated in the employer-sponsored BlueCross BlueShield health care insurance program. The employer offered a few different

health insurance options. The claimant was the only person covered through her participation in the program.

The employer covered almost all of the health care insurance expense, but assessed a nominal fee to the claimant per bi-weekly pay period. Though that nominal fee could change annually, the bi-weekly in 2021 was \$26.00.

In October 2021, the employer sent a broadcast email to employees in anticipation of its annual health insurance open enrollment period. The correspondence included the following COVID-19 related statement:

Surcharge for Unvaccinated Employees: A \$50-per-pay period surcharge will be added for unvaccinated employees, unless proof is provided of a medical condition or deeply held religious belief that prohibits a vaccination. This surcharge can be removed at any time after an employee becomes fully vaccinated and submits the information and vaccine card in My ADP.

The employer did not require the claimant to submit to COVID-19 vaccination or payment of the surcharge as a prerequisite to continued employment. Rather, the employer imposed the requirement only as a condition of continuing coverage under the employer-sponsored health care insurance program in the 2022 calendar year. Though the \$50.00 bi-weekly health insurance surcharge was a significant addition to the \$26.00 bi-weekly contribution the claimant was used to, it represented only 2.85 percent of the claimant's \$1,756.00 bi-weekly average gross wages. The employer declined to engage in in-depth discussion with the claimant regarding the surcharge. Rather, the employer provided the claimant an Frequently Asked Questions (FAQ) document in which the employer cited increased COVID-19 healthcare insurance expense associated with unvaccinated health care insurance participants as the basis for the \$50.00 bi-weekly surcharge. The claimant did not assert a religious basis for declining COVID-19 vaccination. In November 2021, the claimant sent an email message in which the claimant simply stated, "Receiving the vaccine would be injurious to my health and wellbeing." The claimant was under the erroneous belief that she had contracted and recovered from COVID-19 in 2019, a time that preceded the documented arrival of the COVID-19 virus in Iowa by months. The claimant concluded she was immune from COVID-19, without a reasonable basis for drawing such conclusion.

In November 2021, the claimant notified the employer she was opting out of the employer-sponsored healthcare insurance program. The employer invited the claimant to explore other health insurance exchanges.

On January 4, 2022, the claimant notified the employer she would be leaving the employment effective January 14, 2022. The claimant's participation in and coverage under the employer-sponsored healthcare insurance program officially ended on January 3, 2022, pursuant to the claimant's voluntary termination of her participation. The claimant worked the notice period and then voluntarily separated from the employment effective January 14, 2022. The employer continued to have the same employment available to the claimant at the time of the separation.

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(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. *Id.* An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

Iowa Code section 94.2 provides

COVID-19 vaccination requirements by employers — waiver. An employer that requires an employee to receive a COVID-19 vaccine shall waive the requirement if the employee, or, if the employee is a minor, the employee's parent or legal guardian, requests a waiver and submits either of the following to the employer:

1. A statement that receiving the vaccine would be injurious to the health and well-being of the employee or an individual residing with the employee.
2. A statement that receiving the vaccine would conflict with the tenets and practices of a religion of which the employee is an adherent or member.

Iowa Code section 96.5A provides:

Refusal of COVID-19 vaccination — no disqualification. Notwithstanding any other provision of this chapter to the contrary, an individual who is discharged from employment for refusing to receive a vaccination against COVID-19, as defined in section 686D.2, shall not be disqualified for benefits on account of such discharge.

Iowa Code section 96.7(12) provides:

96.7 Employer contributions and reimbursements.

12. Discharge for refusal of COVID-19 vaccination — effect on experience and rating — limitation on actions. If an employee is discharged from employment for refusing to receive a vaccination against COVID-19, as defined in section 686D.2, the contribution rate and unemployment experience of any employer employing the employee, or an employer that previously employed the employee other than the employer that so discharged the employee, shall be unaffected by such discharge. The department shall not impose any penalty on, or take any other action otherwise permitted under this chapter against, any employer employing the employee, or an employer that previously employed the employee other than the employer that so discharged the employee, as a result of such discharge.

The evidence in the record establishes a voluntary quit without good cause attributable to the employer. The claimant's employment was at no point in jeopardy, whether based on a refusal to get vaccinated against COVID-19 or otherwise. The employer never conditioned the claimant's continued employment on submission to COVID-19 vaccination. The employer did not jeopardize the claimant's safety, health or morals. Rather, the employer merely conditioned the claimant's continued voluntary participation in employer-sponsored health care insurance on the claimant either submitting to COVID-19 vaccination or paying a \$50.00 bi-weekly surcharge. The imposition of the surcharge did not constitute a substantial change in the conditions of the employment. Instead, it represented a nominal 2.85 percent adjustment to the claimant's total compensation, and only if the claimant wished to continue her voluntary participation in the employer-sponsored health care insurance program. 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.

DECISION:

The February 1, 2022 (reference 01) decision is AFFIRMED. The claimant voluntarily quit the employment on January 14, 2022 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

July 6, 2022
Decision Dated and Mailed

jet/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.