

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELE M MILLER-DAY
Claimant

GENESIS HEALTH SYSTEM
Employer

APPEAL 21A-UI-10496-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/19/20
Claimant: Respondent (5)**

Iowa Code section 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On April 14, 2021, Genesis Health System (employer/respondent) filed an appeal from the April 8, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was discharged on November 20, 2020 without a showing of misconduct.

A telephone hearing was held on June 30, 2021. The parties were properly notified of the hearing. Employer participated by HR Coordinator Lindsey Swain. Supervisor Jamie Moen participated as a witness for employer. Michele Miller-Day (claimant/respondent) participated personally.

Employer's Exhibits 1 and 2 were admitted. 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's first day of employment was October 7, 2002. The last day claimant worked on the job was November 20, 2020. Claimant was employed full-time as a medical assistant. Claimant's immediate supervisor was Moen. Claimant requested and was granted leave beginning November 23, 2020 for a family member's medical issues.

While claimant was out on leave her job was posted and she was told she would be considered to have voluntarily resigned if by the end date of her leave, February 14, 2021, she had not been hired for that or another position with employer. Claimant did apply for that position and another for which she was qualified but was not hired for those positions. She attempted to return to work on February 15, 2021 but was not allowed to do so. Claimant never indicated to employer that she intended to resign. Claimant could have returned to work in early January 2021 but was not allowed to at that time either, because her job had already been posted.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the April 8, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was discharged on November 20, 2020 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) 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. But the individual shall not be disqualified if the department finds that:

- c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

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:

- (8)** The claimant left for the necessary and sole purpose of taking care of a member of the claimant's immediate family who was ill or injured, and after that member of the claimant's family was sufficiently recovered, the claimant immediately returned and offered to perform services to the employer, but no work was available. Immediate family is defined as a collective body of persons who live under one roof and under one head or management, or a son or daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law. Members of the immediate family must be related by blood or marriage.

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).

Claimant voluntarily left employment to care for a member of her immediate family. She attempted to return to work when her family member had sufficiently recovered. However, she was not allowed to do so, as her job had already been posted and employer declined to "re-hire" her for that or another position or which she was qualified. As such, claimant's separation from employment was not disqualifying. The appealed decision is modified solely to reflect that claimant's separation was a voluntary leaving rather than a discharge.

DECISION:

The April 8, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was discharged on November 20, 2020 without a showing of misconduct is MODIFIED with no change in effect. Claimant's voluntary leaving on November 20, 2020 was not disqualifying.



Andrew B. Duffelmeyer
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July 12, 2021
Decision Dated and Mailed

abd/lj