

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ESMERALDA CONTRERAS
APT F
1240 MEADOW LN
WATERLOO IA 50701 4651**

**IOWA CVS PHARMACY LLC
C/O THOMAS & COMPANY
PO BOX 280100
NASHVILLE TN 37228**

APPEAL 21A-UI-00295-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPEAL RIGHTS:

This Decision Shall Become Final unless, within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party appeals to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal directly to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
or
Fax (515)281-7191**

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:

The name, address and social security number of the claimant;

A reference to the decision from which the appeal is taken;

That an appeal from such decision is being made and such appeal is signed; and

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your 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.

ONLINE RESOURCES:

UI law and administrative rules:

<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook:

<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-handbook-guide-unemployment-insurance-benefits>

Forms for Employers: <https://www.iowaworkforcedevelopment.gov/employerforms>

Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ESMERALDA CONTRERAS
Claimant

IOWA CVS PHARMACY LLC
Employer

APPEAL 21A-UI-00295-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/16/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On November 19, 2020, Esmeralda Contreras (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated November 10, 2020 (reference 01) that denied benefits based on a finding claimant voluntarily quit on August 14, 2020 without good cause attributable to employer.

A telephone hearing was held on February 5, 2021. The parties were properly notified of the hearing. The claimant participated personally. Iowa CVS Pharmacy LLC (employer/respondent) did not register a number for the hearing and did not participate.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation from employment 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 began working for employer on July 19, 2019. Claimant worked for employer part-time as a pharmacy technician. Claimant's immediate supervisor was Tracy Farnham. The last day claimant worked on the job was August 14 or 15, 2020. Claimant separated from employment on August 17, 2020. Claimant resigned on that date.

Claimant learned shortly before her scheduled shift on August 17, 2020 that she had a college class during that same time that she could not miss. Claimant notified Farnham prior to her shift starting to report the conflict. Farnham instructed claimant to contact Cole, the pharmacist on duty that day. Cole was less than understanding about claimant's conflict, saying that she must be present at the start of her shift or she would be written up. Claimant was upset by her interaction with Cole and reported as much to Farnham. Farnham was apologetic and advised claimant to take a couple days to think about things before proceeding further. However, claimant was very upset by her interaction with Cole and determined at that time to resign. Claimant did not attempt to return to work for employer after that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated November 10, 2020 (reference 01) that denied benefits based on a finding claimant voluntarily quit on August 14, 2020 without good cause attributable to employer is AFFIRMED.

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. 871-24.25 provides in relevant part:

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:

(26) The claimant left to go to school.

(28) The claimant left after being reprimanded.

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 resigned due to the threat of reprimand if she were to miss her scheduled shift in order to attend class. The administrative law judge is sympathetic to the reason for claimant's resignation. Claimant's interaction with Cole was understandably upsetting. However, there were steps claimant could have taken prior to resigning, such as attempting to return to work after her class and/or contesting any reprimand if she were to receive one. Claimant did not take any such steps, despite being encouraged to take some time to think about things. The administrative law judge determines a reasonable person would not have found the circumstances here to be so intolerable or detrimental as to justify immediate resignation without making any further attempts to salvage the employment relationship. As such, the separation from employment was disqualifying and benefits must be denied.

DECISION:

The November 10, 2020 (reference 01) that denied benefits based on a finding claimant voluntarily quit on August 14, 2020 without good cause attributable to employer is **AFFIRMED**. Claimant's separation from employment was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



Andrew B. Duffelmeyer
Administrative Law Judge

February 19, 2021
Decision Dated and Mailed

abd/ol

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.