

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CHRISTINA M. FINTEL**  
Claimant

**CASE NO. 21IWDUI2113  
APPEAL 21A-UI-09397**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JAI SHRI INC**  
Employer

**OC: 03/07/21  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)A – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant, Christina Fintel, filed an appeal from the March 31, 2021, unemployment insurance decision that concluded she was not eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 4, 2021. Claimant participated personally. Employer failed to participate.

**ISSUE:**

The issue in this matter is whether claimant quit for good cause attributable to employer?

**FINDINGS OF FACT:**

Claimant started working at Employer, a hotel, on or about November 15, 2019 on night audit (front desk duty). Claimant worked roughly 32 hours per week, had a set schedule, and generally worked 10:00 p.m. to 6:00 a.m. However, recently before quitting, instead of having a set schedule as she had since she was hired, employer began scheduling her just as needed. On May 17, 2020, claimant submitted a handwritten letter of resignation to her supervisor informing him that her last day working would be May 31, 2020. Claimant's last day working at employer was subsequently May 31, 2020. Claimant said employer encouraged her to apply for unemployment benefits.

On appeal, claimant gave multiple reasons for why she quit her employment. Claimant detailed how her employer recently changed her schedule and hours, which she was upset about it. Due to this recent change in her schedule and hours, claimant did not believe her wages were sufficient to justify driving from her home in Fairfield to the hotel in Ottumwa. She testified that sometimes her replacement would not show up at 6:00 a.m. like they were scheduled so she had to work until 10:00 a.m. when the manager would come in.

Claimant was also upset with the lack of COVID-19 mitigation measures and procedures. Claimant testified that employer did not put up plastic dividers at the front desk where customers would interact with claimant and other employees. No masks were required by hotel, which was contrary to CDC guidance at the time. The hotel also did not provide other COVID mitigation tools like disinfectant. Most troubling to claimant was management became aware of a COVID-19 positive test by a longer-term hotel guest and did not immediately inform hotel employees of

any possible exposure. Hotel employees were not told of the possible exposure until days later at which point the hotel was temporarily shut down.

Claimant testified that she had previously discussed her concern regarding Employer's lack of COVID-19 mitigation and safety measures and that she did not feel safe because of this. Claimant was nervous about contracting COVID due to vulnerable elderly family members. For all these reasons, claimant decided she needed to quit her employment. As the employer did not appear or provide evidence to the contrary, this evidence is without contradiction.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the following reasons the administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits after her separation from work.

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.

Iowa Admin. Code r. 871-24.25(3) provides:

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

**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:

- (21) The claimant left because of dissatisfaction with the work environment.
- (37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation.

Iowa Admin Code r. 871-24.26 provide:

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

(2) The claimant left due to unsafe working conditions.

(4) The claimant left due to intolerable or detrimental working conditions.

As an initial matter, this is not a discharge case. There is no dispute this is a voluntary quit. The only question that remains is whether there was good cause attributable to the employer. To that question, the water is murky. There are reasons for the quit that are good cause, others are not.

First, it must be made clear that despite what the initial unemployment decision states, this is not a case where the claimant did not show up to work for three days and was subsequently considered to have quit. Instead, it appears that claimant tendered a handwritten resignation letter to her manager on May 17, 2020, with an effective date of May 31, 2020. Typically, a resignation tendered by an employee that is accepted by the employer would indicate a voluntary quit. It is also clear that claimant was not satisfied with no longer having a set schedule and only being scheduled as needed. The claimant did not believe it was financially worthwhile to drive from her home in Fairfield to the hotel in Ottumwa due to the change in hours and schedule. It also appears that claimant's hours may have been substantially changed, which could be a change in the contract of hire, which would be good cause. Further, the fact that claimant's relief often did not show up as scheduled and claimant had to work an additional four hours until a manager came in could also be a change in contract of hire. Claimant never agreed to often work twelve hour shifts because her replacement would not show up as they were supposed to.

However, what is most persuasive to this judge is claimant's concern with employer's lack of COVID-19 mitigation and safety measures. First, the hotel did not require guests or employees to wear masks. There was no plastic divider at the front desk to separate claimant from guests. Disinfectant and other virus killers were not provided to employees. Claimant brought up with employer that she did not feel safe due to the lack of resources and procedures to mitigate the risk of contracting COVID-19. It appears her concern was left unheeded. However, most concerning is employer did not notify employees of possible exposure to COVID-19 when they became aware that a guest tested positive. Only after an employee learned that the guest tested positive did management temporarily close the hotel and send employees home. This lack of notification is the definition of "unsafe, detrimental, and intolerable," considering the potential consequences of contracting the virus.

As stated, there are grounds that lead to claimant quitting that are expressly considered good cause and others that are expressly not good cause. With the employer failing to appear, this judge has no reason to not believe the testimony of claimant. As such, this judge weighs the reasons given by the claimant for the quit and determines that while claimant voluntarily quit and even gave a two week notice, when considering the totality of the evidence, good cause is present. The most persuasive factor being that employees were not immediately notified of potential exposure to COVID-19. While employer probably could not afford to lose so many workers to quarantine when it seems they already struggle to fill shifts, failing to alert employees could have led to a super-spreader situation and put employees, their families, and the public at large at risk. The lack of virus mitigation tools and policies only expounded this risk. This judge also believes there is evidence that supports substantial changes in the contract of hire such as reducing hours and shift reliefs not showing up as scheduled. As such, this judge believes the unsafe nature of the circumstances surrounding the quit allows benefits. The unemployment decision is reversed, the claimant is eligible for benefits provided she is otherwise eligible.

**DECISION:**

The March 31, 2020 unemployment insurance decision is REVERSED. Claimant is eligible to receive benefits provided she is otherwise eligible.



---

Thomas J. Augustine  
Administrative Law Judge  
Department of Inspections and Appeals  
Administrative Hearings Division

6-10-20

---

Decision Dated and Mailed

CC: Christina Fintel, claimant (by first class mail)  
JAI SHRI INC, employer (by first class mail)  
Nicole Merrill, IWD (email)  
Joni Benson, IWD (email)