

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANNE L TUDZIN**  
Claimant

**IMAGINE THE POSSIBILITIES INC**  
Employer

**APPEAL 21A-UI-19292-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/13/21  
Claimant: Appellant (2)**

Iowa Code §96.5(2)a-Discharge/Misconduct  
Iowa Code §96.5(1)- Voluntary Quit

**STATEMENT OF THE CASE:**

On August 31, 2021, the claimant/appellant filed an appeal from the August 23, 2021, (reference 01) unemployment insurance decision that disallowed benefits based on claimant voluntarily quitting because she was dissatisfied with the work conditions. The parties were properly notified about the hearing. A telephone hearing was held on October 19, 2021. Claimant participated in the hearing. Employer participated through Director of Human Resources, Shara Muller. Terri Tudzin was called as a witness for claimant. Administrative notice was taken of the claimant's unemployment insurance benefits records.

**ISSUE:**

Was the separation a voluntary quit with good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 26, 2020. Claimant last worked as a full-time Home Community Based Services Supervisor. Claimant was separated from employment on June 3, 2021, when she resigned.

Claimant was hired to work 8:00 a.m.- 4:30 p.m. Monday through Friday. As the supervisor claimant also had to work on-call and had to cover shifts if they did not have staff to work the shifts. Each shift was scheduled for eight hours. The employer provides a business where they provide care for people with disabilities. As part of claimant's job she would have to ensure three separate sites were staffed appropriately. Each of these sites had 3-5 clients per site. When working with the clients the employees would have to ensure the client's safety and administer medication.

During the week of May 31, 2021, claimant saw that the schedule had 17 shifts that did not have coverage. Claimant went to her supervisor Kimberly Crutcher and informed her of the problem.

Ms. Crutcher did not provide any resources or help provide solutions to cover the staffing shortage.

On June 3, 2021, claimant was scheduled to work the first shift and second shift because they did not have enough coverage. The person that was scheduled to work the third shift called in to work so the claimant covered the third shift. Claimant did not receive a break.

The evening of June 3, 2021, claimant started having mental health problems. Due to her sleep deprivation she started hallucinating. Claimant called her mother Terri Tudzin because she was not doing well. When Terri Tudzin arrived she saw the claimant laying in the fetal position, crying and hallucinating. Ms. Tudzin called claimant's employer and notified them that she would be resigning. Claimant submitted a written resignation on June 4, 2021. Claimant resigned due to her mental health.

The employer has a policy that employees cannot work more than 16 hours straight without a break. The employer requires a minimum of a four hour break. The employer requires pre-approval before an employee can work 24 hours straight. The employer acknowledges that working 24 hours straight can be unsafe since employees can become sleep deprived. The employer acknowledges employees need to be alert to provide the proper care and distribute medication properly to the clients. The employer acknowledges that a staffing shortage has been an ongoing problem for the employer. The employer acknowledged that claimant worked multiple shifts in addition to her regular schedule throughout her employment.

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

For the reasons that follow, the administrative law judge finds that the claimant voluntarily quit with good cause attributable to the employer.

Iowa Code §96.5(1) 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.

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). In this case, the claimant voluntarily quit her employment. As such, claimant must prove 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).

Iowa Admin. Code r. 871-24.26(2) & (4) 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:

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

Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005). “Good cause attributable to the employer” does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)(“[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith”); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer “free from fault”); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)(“The good cause attributable to the employer need not be based upon a fault or wrong of such employer.”). Good cause may be attributable to “the employment itself” rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956). Therefore, claimant was not required to give the employer any notice with regard to the intolerable or detrimental working conditions prior to her quitting. However, claimant must prove that her working conditions were intolerable, detrimental, or unsafe.

In this case, as the supervisor, the claimant was expected to cover open shifts if they did not have staff to fill the schedule. This led to the claimant working three shifts continuously without a break. Fatigue due to long working hours, especially without a break in the shift, is reasonably well known in the lay community, and by reasonable person standards, to cause more errors in work duties and is more likely to result in injury. The long hours is not only unsafe for the claimant but is unsafe for the clients. The evidence established that the long hours and stress of covering the open shifts impacted claimant's mental health to the point she was hallucinating. Additionally, the staffing shortage was not for a brief period with an end in sight but is continuing in nature. Claimant has proven that her working conditions were intolerable and detrimental. Thus, the separation was with good cause attributable to the employer. As such, benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The August 23, 2021 (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

A handwritten signature in black ink that reads "Carly Smith". The signature is written in a cursive style with a horizontal line extending from the end of the name.

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Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

October 27, 2021  
Decision Dated and Mailed

cs/scn