

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERESE WALLACE

Claimant

ROBERTS BAYER LLC

Employer

APPEAL 21A-UI-07121-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 2, 2021, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on May 18, 2021. Claimant participated and testified. Employer participated through Managing Partner Margaret Ortiz. Exhibits 1, A, B, C, and D.

ISSUE:

1. Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?
2. Whether the claimant was able and available for work after separating from employment?

FINDINGS OF FACT:

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

The claimant was employed part-time as a massage therapist from June 14, 2014, until she was separated from employment on August 13, 2020, when she quit. Managing Partner Margaret Ortiz was the claimant's immediate supervisor.

The claimant has a seven year old son with a disability who attends Davenport Public Schools. In 2020, Davenport Public Schools announced they would open with a hybrid schedule. The hybrid schedule required the claimant to remain at home and watch her seven year old son. The claimant provided a calendar showing Davenport Public School's hybrid 2020-2021 academic calendar. (Exhibit B)

On July 27, 2020, the claimant sent her resignation notice by email to Ms. Ortiz. In the email, the claimant stated she was resigning effective August 13, 2020, due to Davenport Public School's hybrid system, formed in response to Covid19. The employer provided a copy of the claimant's resignation email. (Exhibit 1)

On August 16, 2020, the claimant sent text messages to Ms. Ortiz stating she believed she was eligible for Pandemic Unemployment Assistance and asking how she was classified in the system. Ms. Ortiz clarified she was entered into the system as a quit, but she was eligible for rehire. The claimant provided copies of these text messages. (Exhibit C and D)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer. The claimant's ability to and availability for work is moot because her separation is disqualifying.

Iowa Code section 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.

Iowa Admin. Code r. 871-24.25 provides:

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:

(17) The claimant left because of lack of child care.

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

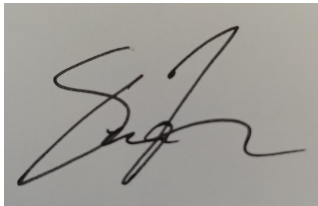
(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

The 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). 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).

The administrative law judge is sympathetic to the claimant's reason. The claimant's quit was compelled by Davenport Public School's hybrid system. However, the claimant's reason for resignation is generally disqualifying under Iowa Admin. Code r. 871-24.25(17), (23) and (37). While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Since the claimant's separation is disqualifying, her ability and availability is moot. Benefits are denied.

DECISION:

The March 2, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

June 1, 2021
Decision Dated and Mailed

smn/kmj

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.