

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTINA A ZUMWALT
Claimant

APPEAL 21A-UI-00115-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANAM CARA CORPORATION
Employer

**OC: 04/19/20
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Claimant filed an appeal from the November 23, 2020 (reference 04) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 3, 2021 at 10:05 a.m. Claimant participated. Employer did not participate. No exhibits were admitted.

ISSUE:

Whether claimant's separation was a voluntary quit without good cause attributable to employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment as a part-time caregiver with Anam Cara Corporation in late January 2020. On April 10, 2020, claimant broke her arm at home. During the third week of April 2020, claimant agreed to do a companionship assignment for employer. The assignment would not require claimant to perform caregiver tasks; claimant could not serve as a caretaker due to her arm injury. When claimant reported to the client's home, the client asked her to perform many caregiver tasks outside of the scope of companionship. Claimant performed the tasks. Claimant did not inform employer that the assignment required more than companionship.

On May 1, 2020, claimant's physician advised claimant not to work. On May 7, 2020, claimant had surgery on her arm. After the surgery, claimant was required to complete two to three months of physical therapy. Claimant got upset with her physician and has not returned. As a result, claimant has not obtained a release to return to work from her physician.

Claimant believes that she is physically able to perform her job duties. Claimant has not returned to employer and offered her services, because she is upset that her last assignment with employer was represented as a companionship assignment but required her to perform caregiving tasks. Claimant began working for a new employer on August 11, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit work without good cause attributable to employer. Benefits are denied.

Iowa Code section 96.5(1)d 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:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

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). Where a claim gives numerous reasons for leaving employment the agency is required to consider all stated reasons which might combine to give the claimant good cause to quit in determining any of those reasons constitute good cause attributable to the employer. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534 (Iowa 1985).

Iowa Admin. Code r. 871-24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

Claimant sustained a non-work-related injury and obtained the advice of a physician. Claimant has not been released by her physician or returned to employer and offered her services. Because claimant has not been released by her physician and did not return to employer and offer her services, she has not met the criteria for the exception to disqualification set forth in Iowa Code section 95.5(1)d.

Claimant's other stated reason for quitting was that she was asked by a client to perform caregiving duties during a companionship assignment. There is no evidence that employer intentionally misrepresented the nature of the assignment. Claimant did not notify employer that the assignment's duties exceeded the scope of companionship. Claimant has not met her burden of proving she voluntarily quit her employment for good cause attributable to employer. Benefits are denied.

DECISION:

The November 23, 2020 (reference 04) unemployment insurance decision is affirmed. Claimant voluntarily quit without good cause attributable to employer. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



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February 19, 2021
Decision Dated and Mailed

acw/mh