IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

VICKI KING Claimant **4090 WESTOWN PARTNERSHIP** Employer	**APPEAL 21A-UI-05746-SN-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 01/03/21** **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 17, 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 April 22, 2021. Claimant participated and testified. The claimant was represented by Marlon Mormann, attorney at law. Kathleen Delay provided testimony in support of the claimant. The employer did not participate. Exhibits A, B, C, D, E, F, and G were admitted into the record.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

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

In 2018, the claimant returned to Iowa from Boston to take care of her elderly father and be closer to relatives.

The claimant began working as an office assistant for 4090 Westown Partnership, LLC on May 8, 2019. The claimant's immediate supervisor was Insurance Agent Dennis Bell. The office is roughly 1500 to 2000 square feet. It has a conference room and three offices. At the time of her hire, the claimant informed Mr. Bell that her father was placed in a nursing home. The claimant informed Mr. Bell of her father's subsequent placement on hospice.

In 2020, the claimant's mother, a 77-year-old breast cancer survivor, came over to the claimant's residence on weekends. The claimant's step mother, a 75-year-old thyroid cancer survivor, would occasionally visit the claimant's residence. Neither of these individuals had a note from their medical provider stating the claimant should quarantine.

After the onset of the pandemic, the claimant and Mr. Bell came to an arrangement that she would work remotely on Monday, Tuesday, Wednesday and Friday of each week. Mr. Bell would not authorize her to receive her payment by direct deposit, so the claimant worked on Thursdays to receive her check. The claimant worked at the front desk in the office. A physical barrier was not installed between her and clients or other visitors. Stickers were not placed on the floor to encourage social distancing. In this context, the claimant requested that client meetings not occur on Thursdays. This request was for the most part granted because she scheduled the meetings.

On her days in the office, the claimant was allowed to wear a mask. Mr. Bell would not be wearing a mask when she came in to the office. After instructing Mr. Bell to put on his mask, he would temporarily wear it, but he would remove it later in the day.

On Tuesday and Thursdays, the claimant visited her father in ProMedica Senior Care. The claimant provided a copy of ProMedica Senior Care's guidelines for visitors. (Exhibit C) The visitor guidelines conform to general Covid19 guidelines issued by the Centers for Disease Control. They do not instruct visitors that they must quarantine. Prior to entering the building, the claimant was screened for Covid19 through the use of a rapid test and temperature checks.

On November 25, 2020, Mr. Bell and his wife came to the office without their masks on. The claimant complained to Director of Development Susan Helmers about Mr. Bell's refusal to engage in social distancing.

On December 23, 2020, Mr. Bell was in the office without his mask on. This was the final straw that caused the claimant to quit employment.

On December 31, 2020, the claimant sent her resignation to Mr. Bell via text message and also through postage with an effective date of January 8, 2021. In her resignation notice, the claimant said she had become "less and less satisfied" with her work situation over the last several months. The claimant provided a copy of her resignation notice. (Exhibit A)

After the she resigned, the claimant filed an Occupational Safety and Health Association complaint against 4090 Westown Partnership, LLC. In the complaint, the claimant expressed that Mr. Bell did not wear a mask, even after she told him to wear one. She also said that Mr. Bell did not take adequate safety measures to reduce the risk of Covid19. (Exhibit D)

In mid-January 2021, the claimant started experiencing symptoms of Covid19. On January 18, 2021, she was tested. She received a positive test result on January 20, 2021. The claimant provided an undated copy of her test results. (Exhibit E) The test results recommend self-isolation for 10 days since the onset of symptoms or 24-hours after recovery. The claimant states she experienced symptoms until the end of February 2021. The claimant did not have an employer at the time.

The claimant contends she was unable to adequately search for work while she was experiencing symptoms of Covid19 because she could not attend in person interviews. However, the claimant conceded she was able to attend interviews online.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant quit without good cause attributable to the employer.

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:
>
> (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.

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).

Iowa Admin. Code r. 871-24.26(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:
>
> (4) The claimant left due to intolerable or detrimental working conditions.

As such, if claimant establishes that she left due to intolerable or detrimental working conditions, benefits would be allowed. 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 Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Bd.*, 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 alleged intolerable or detrimental working conditions prior to her quitting. However, claimant must prove that her working conditions were intolerable or detrimental.

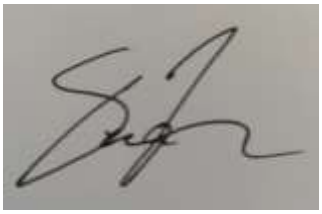
The claimant was in the office for one day out of a working week. While her supervisor did not properly social distance himself or use a mask, he was the only other person who entered the office. He also had his own office space. The claimant was able to wear a mask and use other personal protective equipment. In that context, the claimant's work environment was immeasurably better than most work environments during the Covid19 pandemic from a infection risk standpoint.

Given the facts of this case, claimant's working conditions do not rise to the level where a reasonable person would feel compelled to quit. As such, she has failed to prove that under the same circumstances a reasonable person would feel compelled to resign. *See O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). Rather, the circumstances in this case seem to align with the conclusion that claimant was dissatisfied with her work environment in general. This is not a good cause reason attributable to the employer for claimant to have quit.

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. Benefits are denied.

DECISION:

The February 17, 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.



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Sean M. Nelson
Administrative Law Judge

Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

May 13, 2021
Decision Dated and Mailed

smn/ol