

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANN M FAIRCHILD
Claimant

HY-VEE INC
Employer

APPEAL NO. 20A-UI-11422-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/21/20
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Ann Fairchild filed a timely appeal from the September 8, 2020, reference 02, decision that disqualified her for unemployment insurance benefits and held the employer's account would not be charged for benefits, based on the deputy's conclusion that Ms. Fairchild voluntarily quit on July 27, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on November 23, 2020. Ms. Fairchild participated. Barbara Buss from Corporate Cost Control, Inc. represented the employer and presented testimony through Teri Lunning, Renee Aukes and Doug Rosendahl. The hearing in this matter was consolidated with the hearing and appeal number 20A-UI-11421-JTT. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO and KCCO.

ISSUE:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ann Fairchild was employed by Hy-Vee, Inc. as a full-time Assistant Manager at the Forest City store from June 2019 until July 27, 2020, when she voluntarily quit. Ms. Fairchild became an employee of Hy-Vee when Hy-Vee took over operations at the grocery store where Ms. Fairchild was employed as Front End Manager. Ms. Fairchild's relationship with Hy-Vee Store Director Renee Aukes was strained over an extended period. At least part of this strain was attributable to Ms. Fairchild's lack of tact and violation of Hy-Vee work rules. On June 11, 2020, Ms. Aukes summoned Ms. Fairchild to a meeting in the office. Ms. Aukes told Ms. Fairchild, "I am so angry, I should fire you right now—you should start looking for another job." On June 21, 2020, the store management team discharged Ms. Fairchild from the employment for cursing at a colleague and for referring to a disabled subordinate as "crippled up." A company vice president reviewed the discharge decision the same day, rescinded the discharge, and reinstated Ms. Fairchild to the employment. The vice president provided Ms. Fairchild with a two-week period of paid time off and Ms. Fairchild returned to the employment on July 6, 2020.

On Tuesday, July 14, 2020, Ms. Fairchild submitted a request to have Saturday, August 1, and Sunday, August 2, 2020 off in connection with her grandchild's baptism. Ms. Fairchild submitted her request for time off one day after the Monday cut-off date for time off requests for the relevant scheduling period. Ms. Fairchild was displeased when she reviewed the posted schedule and saw that she was scheduled to work on the days she had belatedly requested off. The baptism was to occur on Sunday morning. Ms. Fairchild was scheduled to work Sunday afternoon beginning at 2:30 p.m. Ms. Fairchild wanted the entire weekend off so that she could spend time with her family. Pursuant to the employer's policy, and based on the untimely request for time off, Ms. Fairchild was required to find her own replacement to cover the shifts or work the shifts. Ms. Fairchild located someone to work the Saturday shift and the employer approved that change to the work schedule. Ms. Fairchild located someone willing to work her Sunday shift, but the added shift would place the coworker into overtime work hours. The employer rejected the request to have the coworker cover the Sunday shift due to the overtime concern. Ms. Fairchild continued to be upset about the denied request for time off. Ms. Aukes told Ms. Fairchild that she expected her to appear for the shift if she did not find acceptable coverage.

On July 22, 2020, Ms. Fairchild was absent from work due to a back pain issue. Ms. Aukes heard from others that Ms. Fairchild had wanted the day off for other purposes. Upon Ms. Fairchild's return, Ms. Aukes questioned Ms. Fairchild regarding whether Ms. Fairchild had indeed been ill or whether she had simply wanted the day off for some other purpose. During this contact, the Ms. Aukes stated, "I don't believe a word that is coming out of your mouth." Ms. Fairchild was offended by the employer's assertion that she was being dishonest. Ms. Fairchild continued to be upset by this interaction.

On Monday, July 27, Ms. Fairchild asked the store Human Resources Manager, Teri Lunning, for her personnel file. Ms. Lunning told Ms. Fairchild that Ms. Lunning would first need to contact the corporate human resources personnel for guidance on the appropriate protocol for responding to such a request. Ms. Aukes was present for this interaction. A short time later, mid-way through her shift, Ms. Fairchild summoned her supervisor, Doug Rosendahl, to the front of the store. Ms. Fairchild stated that she did not want to work for an employer who thought she was lying and that she could not do it anymore. Ms. Fairchild stated that no one respected her, that staff were spreading rumors about her, and that she was now in a position to receive spousal Social Security benefits. Mr. Rosendahl asked Ms. Fairchild whether she wished to complete her shift. Ms. Fairchild elected to leave immediately and did not return. At the time of the separation, the employer continued to have full-time work for Ms. Fairchild.

Ms. Fairchild's belief that the Store Director, Ms. Aukes, bullied and harassed her factored heavily in Ms. Fairchild's decision to leave the employment. The employer has a harassment policy. The policy directs employees to report harassment to a supervisor or to the human resources personnel, both of whom reported to Ms. Aukes.

REASONING AND CONCLUSIONS OF LAW:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992).

Iowa Admin. Code r. 871-24.25(21) and (22) 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 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.
- (22) The claimant left because of a personality conflict with the supervisor.

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.

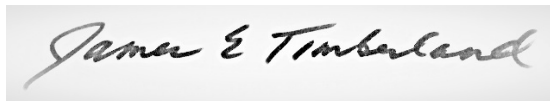
Regarding quits due to intolerable and/or detrimental working conditions, the test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

The weight of the evidence in the record establishes a July 27, 2020 voluntary quit that was without good cause attributable to the employer. Ms. Fairchild unreasonably discounts her contribution to the strife she experienced in the employment. She rationalizes cursing at the coworker, even though it was clearly unacceptable behavior. She cannot bring herself to acknowledge the tactlessness of referring to a person with disabilities as "crippled up." She makes a late request for time off and then faults the employer for following company policy regarding shift coverage and overtime. She requests a copy of her personnel file, a move that would place a reasonable employer on guard, and then faults the employer for indicating the employer needs to seek guidance on the appropriate protocol for responding to the request. There is an unreasonableness and lack of self-awareness that colors her interactions with the employer. On the other hand, Ms. Aukes at times omitted tact from her interactions with Ms. Fairchild. She concedes that she told Ms. Fairchild to look for another job. She authorized a June 21 discharge that did not comport with company practices. Despite the conflict of wills, the particular circumstances that triggered Ms. Fairchild's quit do not rise to the level of intolerable and detrimental working conditions that would prompt a reasonable person to feel compelled to leave the employment. The evidence establishes a voluntary quit without good cause attributable to the employer that was based on dissatisfaction with the work environment and a personality conflict with the Store Director. Accordingly, Ms. Fairchild is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Fairchild must meet all other eligibility requirements. The employer's account will not be charged.

DECISION:

The September 8, 2020, reference 02, decision is affirmed. The claimant voluntarily quit the employment on July 27, 2020 without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

The claimant quit the employment for without good cause attributable to the employer. The claimant is not eligible for benefits. The employer's account shall not be charged.



James E. Timberland
Administrative Law Judge

December 7, 2020
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>.