

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LUDMILA BELONOZHKO
Claimant

CARE INITIATIVES
Employer

APPEAL 20A-UI-06386-HP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2) – Discharge Due to Misconduct

STATEMENT OF THE CASE:

Claimant Ludmila Belonozhko filed an appeal from a June 12, 2020 (reference 01) unemployment insurance decision that denied benefits based upon her voluntarily quitting work without good cause attributable to the employer, Care Initiatives. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for July 22, 2020. Belonozhko appeared and testified. Lucie Reed represented Care Initiatives. Michelle Kerschner appeared and testified on behalf of Care Initiatives. I took administrative notice of the claimant's unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

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

FINDINGS OF FACT:

Belonozhko commenced part-time employment as a housekeeping and laundry aide with Care Initiatives on January 15, 2019. Care Initiatives moved Belonozhko to full-time on March 5, 2019. During her employment, Belonozhko worked as a housekeeping and laundry aide and she was paid \$8.75 per hour. Kerschner is the administrator of the Care Initiatives facility in Knoxville. For most of her employment, Marie Keller was Belonozhko's direct supervisor. At the end of her employment, Desiree Binns was her direct supervisor.

On May 2, 2019, Belonozhko had someone from her church speak with a coworker on the phone during a paid break. Her coworker is transgender. The person on the phone questioned the coworker's gender and sexual preferences and offered to have someone come and speak to him about becoming a woman again because that was what God had intended him to be. The coworker reported the incident to Care Initiatives. Belonozhko had been verbally counseled in the past for discussing her religion at work. Residents of the facility had complained to Care Initiatives that Belonozhko was discussing her religion with them and asked that she be told not to do that. Belonozhko also talked to the office manager about her religious beliefs.

Kerschner and Keller met with Belonozhko on May 15, 2019, to discuss the incident with her coworker. Kerschner issued a written verbal warning that provided "employee will maintain a professional atmosphere while at work and not force others to participate in her religious beliefs

or practices. Employee will be open to diversity and practice tolerance at all times.” Belonozhko signed the written verbal warning. Kerschner warned Belonozhko additional infractions would result in discipline, up to and including termination. Care Initiatives did not have any problems with Belonozhko after she received the written verbal warning.

Belonozhko asked to transfer to the Chariton facility, closer to her home. Kerschner denied the request because Belonozhko was not eligible for a transfer, due to the discipline she had received.

Belonozhko did not like doing laundry. She testified she was not supposed to be doing laundry. Belonozhko reported two employees were normally scheduled to work in housekeeping in the facility, but the facility was understaffed and she had to work the entire facility. Kerschner testified Belonozhko’s job title did not change during her employment. Belonozhko had been hired to work in housekeeping and as a laundry aide.

Belonozhko sent Binns a two-week written notice on August 9, 2019, stating she was resigning August 23, 2019. Belonozhko checked the reason she was leaving was for personal reasons. She did not offer any additional explanation. Belonozhko did not complain to Binns or Kerschner about her pay or job duties before she resigned. Belonozhko resigned on August 23, 2019.

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: . . . If the individual has left work voluntarily without good cause attributable to the individual’s employer, if so found by the department.” The Iowa Supreme Court has held a “voluntary quit” means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer.” *Wills v. Emp’t Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires “an intention to terminate the employment relationship accompanied by an overt act carrying out the intent.” *Peck v. Emp’t Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). “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).

871 Iowa Administrative Code 24.25(21) 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.

871 Iowa Administrative Code 24.26(1) and (4) provide:

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:

24.26(1) A change in the contract of hire. An employer’s willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker’s safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work,

etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

24.26(4) The claimant left due to intolerable or detrimental working conditions.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Serv.*, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. *Id.* An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See *Olson v. Emp't Appeal Bd.*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

If the claimant establishes the claimant left due to intolerable or detrimental working conditions, benefits are 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 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. The Iowa Administrative Code was amended in 1995 to include an intent-to-quit requirement. The requirement was only added, however, to 871 Iowa Administrative Code 24.26(6)(b), the provision involving work-related health problems. No intent-to-quit requirement was added to 871 Iowa Administrative Code 24.26(4), the intolerable working conditions provision. The Iowa Supreme Court concluded that, because the intent-to-quit requirement was added to 871 Iowa Administrative Code 24.26(6)(b) but not 871 Iowa Administrative Code 24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't 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. Emp't Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988) ("good cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Emp't Sec. Comm'n*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Emp't Sec. Comm'n*, 76 N.W.2d 787, 788 (Iowa 1956) ("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, the claimant is not required to give the employer any notice with regard to the alleged intolerable or detrimental working conditions prior to quitting. However, the claimant must prove the claimant's working conditions were intolerable or detrimental.

I do not find Belonozhko's pay or job duties changed to support a change in the contract of hire. She was hired to work in housekeeping and as a laundry aide. While Belonozhko did not like performing laundry tasks, she accepted the position when it was offered to her.

Belonozhko testified her working conditions were intolerable because she was forced to clean the laundry, the facility did not increase her pay, and the facility refused her transfer request. Belonozhko's request for a transfer was denied because she had been disciplined. Belonozhko was hired to perform housekeeping and laundry tasks. Her pay remained constant. I do not find Belonozhko has established the working conditions at Care Initiatives were unsafe, intolerable and detrimental and rose to the level where a reasonable person would feel compelled to quit and do not constitute a good cause reason attributable to Care Initiatives for Belonozhko to have quit. Benefits are denied.

DECISION:


Regular Unemployment Insurance Benefits Under State Law

The June 12, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is affirmed. Claimant voluntarily quit her employment with the employer on September 6, 2019. Unemployment insurance benefits are denied until the claimant has worked in and earned wages for insured work equal to ten times her weekly benefit amount after his separation date, and provided she is otherwise eligible.

Pandemic Unemployment Assistance (“PUA”) Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (“PUA”) that may provide up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive an additional \$600 weekly benefit amount under the Federal Pandemic Unemployment Compensation program if the individual is eligible for PUA benefits for the week claimed. This decision does not address whether the claimant is eligible for PUA. If the claimant wishes to receive PUA benefits, the claimant must apply for PUA, as noted in the instructions provided in the “Note to Claimant” below:

Note to Claimant: If this decision determines you are not eligible for regular unemployment insurance benefits and 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>.** This decision denies benefits. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.



Heather L. Palmer
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July 28, 2020
Decision Dated and Mailed

hlp/scn