

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KIM S RUDOLPH
Claimant

APPEAL 17A-UI-13363-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 12/03/17
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

Kim S. Rudolph (claimant) filed an appeal from the December 20, 2017, reference 01, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit due to a non-work related illness or injury which is not a good cause reason attributable to Casey's Marketing Company (employer). The parties were properly notified about the hearing. A telephone hearing was held on January 19, 2018. The claimant participated. The employer participated through Store Manager Sandra Ihrmeier. The Employer's Exhibit 1 was received without objection. The claimant had witnesses registered for the hearing, but did not make prior arrangements with Assistant Manager Danielle Frasier or Dr. Stubbs to be available for a phone call during the hearing so they were not contacted. She stated her witnesses David Trumble and her husband, Al Rudolph, had nothing new or additional to add about the end of her employment and they were not contacted.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Store Employee beginning on December 23, 2015, and her last day of work was July 27, 2017.

On that day, the claimant reported to work at 8:00 a.m. and was told to make sub sandwiches. Around 10:00 a.m. when Assistant Manager Danielle Frasier was to leave, the claimant was to move to the large kitchen and make pizza and sandwiches for the warmer. Frasier told claimant it was all hers and left. The claimant then hung up her chef's coat and left. She walked past Store Manager Sandra Ihrmeier, who was working at the register, and said she was done. Ihrmeier asked the claimant to come back to explain what was happening and the claimant left.

The claimant left work that day because she was not feeling well. She went to the hospital that afternoon and was admitted for two days. The doctor determined she had a bleeding ulcer in her stomach and she required a blood transfusion. He stated the cause of the ulcer was stress. The claimant was released from the hospital after two days.

The claimant was scheduled to work through Saturday, August 5, 2017. However, she did not contact the employer to tell them of her illness or arrange for time off work. She did not have her spouse or anyone else notify the employer of her illness or need for an absence from work. In November 2017, the claimant completely recovered from her ailment and asked the employer if she could have her job back. The claimant's request was denied.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is separated from the employment without good cause attributable to employer. Benefits are denied.

Iowa Code section 96.5(1)d 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. 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.

Iowa Admin. Code r. 871-24.25 provides, in relevant part:

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:

...

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

(21) The claimant left because of dissatisfaction with the work environment.

(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.

Iowa Admin. Code r. 871-24.26(6)b 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:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following

factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

The claimant walked off the job on July 27, 2017, without notice to the employer. She was not feeling well, but did not seek permission to leave from her supervisor. She merely stated she was done. The claimant's decision to leave the employment without notice or reason and the failure to return to work renders the separation job abandonment without good cause attributable to the employer.

Accepting that the claimant left work due to illness or injury, she has still not established that it was with good cause attributable to the employer. The claimant has not established that the medical condition was work related as she has not presented any medical evidence that her work was the cause of the stress that led to her ulcer. Medical personnel did not advise her to quit prior to walking off the job on July 27, 2017. The claimant failed to notify the employer of the necessity of an absence immediately upon learning it was required. Additionally, even if the claimant's illness was job related, benefits would still be withheld as she did not request accommodation before quitting. Accordingly, the separation is without good cause attributable to the employer. Benefits are denied.

As benefits are denied, the issue of whether the claimant is able to or available for work is moot.

DECISION:

The December 20, 2017, reference 01, unemployment insurance decision is affirmed. The claimant is separated from the employment without good cause attributable to employer. Benefits are withheld until such time as she works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant is able to and available for work is moot.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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