

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

GABRIELA CONTRERAS CAMPANA
Claimant

PRIMARY HEALTH CARE INC.
Employer

APPEAL 22A-UI-15629-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/26/22
Claimant: Appellant (1)**

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit

STATEMENT OF THE CASE:

On July 27, 2022, the claimant/appellant filed an appeal from the July 19, 2022, (reference 01) unemployment insurance decision that denied benefits based on claimant voluntarily quitting on June 19, 2022, for personal reasons. The parties were properly notified about the hearing. A telephone hearing was scheduled to be held on September 1, 2022. Claimant requested the hearing be postponed so she could obtain an attorney. After due notice a telephone hearing was held on October 25, 2022. Claimant participated. Employer participated through attorney Haley Hermanson. Recruitment and Retention Director, Lisa Thang testified on behalf of employer. Administrative notice was taken of claimant's unemployment insurance benefits record. Exhibits 1, 2, 3, 4, 5, 6, and 7 were admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 19, 2007. Claimant last worked as a full-time Health Benefits Specialist.

The week of May 9, 2022, a complaint was made against claimant for violating the employer's sexual harassment policy. The employer investigated the complaint and drafted a final written warning for claimant on May 17, 2022. (Exhibit 2). The employer did not present the final written warning to claimant until May 23, 2022. (Exhibit 2).

On May 23, 2022, claimant asked her supervisor, Melody Smith and Sarah Kokkie, to be transferred to another location. Claimant asked for the transfer because she believed the work environment was toxic and she believed she was being discriminated against.

Claimant believed that her co-workers were sabotaging her so that she was not performing her job correctly. Claimant believes her co-workers were not evenly distributing the patients between

her and another co-worker. Claimant also believed that her co-workers were not notifying her when patients were there so that way the patients would have extended waiting times before they were seen. Claimant believed that her co-worker was deleting files that she had completed.

Claimant also believes she was discriminated against because she was not hired for the Health Benefits Specialist position seven different times. Claimant was finally hired for the position on January 22, 2022.

After her meeting with Ms. Smith and Ms. Kokkie, claimant had a meeting with Ms. Thang to discuss the complaint. Ms. Thang gave claimant her final written warning for violating the sexual harassment policy. Claimant again asked for a transfer to a different location because of the toxic work environment and the discrimination. Ms. Thang informed claimant she could not transfer to a different location because she was not in good standing. Under the employer's policy employees are considered in good standing if they are not currently and have not in the past six months been on a written warning or a performance improvement plan. (Exhibit 5, pg. 14). The policy also states: "Employees not in good standing may not be eligible for transfers or bonuses or other incentive programs." (Exhibit 5, pg. 14).

On May 26, 2022, claimant informed her supervisor, Ms. Smith, that she was quitting. Ms. Smith informed claimant that if she wanted to leave in good standing that she would need to submit her two weeks to allow the employer time to fill the position. Claimant agreed to provide her two weeks' notice to the employer. Ms. Smith asked claimant if she wanted to transfer to the floating position where she would need to travel between clinics based on their need for coverage. (Exhibit 7). Claimant refused to accept the position but did finish her two weeks' notice at the Marshalltown clinic.

Claimant primarily quit because of the toxic work environment and the employer's refusal to transfer her to another position that was similar to the Health Benefits Specialist position.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge finds that the claimant voluntarily quit with good cause attributable to the employer.

Iowa Code §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. 871-24.26 (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.

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). In this case, the claimant voluntarily quit her employment. As such, claimant must prove 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). "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 intolerable or detrimental working conditions prior to her quitting. However, claimant must prove that her working conditions were intolerable, detrimental, unlawful, or unsafe.

Iowa Admin. Code r. 871-24.25(21) and (28) provide:

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:

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

(28) The claimant left after being reprimanded.

Claimant testified she primarily voluntarily quit her employment because of the toxic work environment and the employer's refusal to transfer her to a different location. Claimant did not complain about the toxic work environment until after a complaint had been filed against her for violating the sexual harassment policy. Claimant testified that the environment was toxic because her co-workers were trying to sabotage her work performance. Claimant testified that they would not evenly distribute the patients, would not tell her when patients were present so they would have to wait an extended amount of time, and her co-workers would delete her files. Claimant was not reprimanded for her work performance. Claimant was upset that she was accused of violating the sexual harassment policy and requested that she be transferred. When the employer refused to transfer claimant to another location because she was not in good standing due to her final written warning, claimant submitted her resignation.

Claimant has not proved that her working conditions were intolerable or detrimental based on a average reasonable person standard. Claimant's leaving was not based on good cause but rather was because she was dissatisfied with the work environment after she was reprimanded. While claimant's leaving the employment 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 July 19, 2022 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld in regards to this employer until such time as claimant is deemed eligible.

A handwritten signature in black ink that reads "Carly Smith". The signature is written in a cursive, flowing style.

Carly Smith
Administrative Law Judge

October 28, 2022
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.