

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

LEAH N SKALLERUP

Claimant

APPEAL NO. 16A-UI-05453-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS DEVELOPMENT

Employer

OC: 04/17/16

Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Leah Skallerup filed a timely appeal from the May 5, 2016, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Skallerup had voluntarily quit on April 8, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on May 27, 2016. Ms. Skallerup participated. Trista Humble represented the employer and presented additional testimony through Justin Terry. Exhibits One through Seven, 10, 11, 12, 16 and A were received into evidence.

ISSUE:

Whether Ms. Skallerup'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: Genesis Development provides support services to adults with physical and intellectual disabilities. Leah Skallerup began her full-time employment with Genesis Development in April 2014. Ms. Skallerup initially worked as a Work Service Supervisor. In June 2014, Ms. Skallerup moved into a Discovery Aide position. In that position, she assisted clients with activities of daily living and in day habilitation activities. Ms. Skallerup's work hours were 8:15 a.m. to 4:15 p.m., Monday through Friday. From the start of Ms. Skallerup's work in the Discovery Aide position, Trista Humble, Day Habilitation Supervisor, was Ms. Skallerup's immediate supervisor. Ms. Skallerup and Ms. Humble had a strained relationship. Throughout the employment, Ms. Skallerup perceived that Ms. Humble engaged in preferential treatment of some other employees.

On the morning of March 24, 2016, Ms. Skallerup fell down some stairs at home and hit her head hard. The incident occurred 10 minutes before Ms. Skallerup needed to report for work. Ms. Skallerup knew she needed to collect a coworker who needed a ride for work. Ms. Skallerup reported for work on time. When Ms. Humble arrived at the workplace, Ms. Skallerup told Ms. Humble that she had an emergency that she needed to talk to her about. Ms. Humble asked Ms. Skallerup to give her a minute. Ms. Humble then closed the door to her

office. When Ms. Humble opened her office door, Ms. Skallerup told Ms. Humble that she had fallen down some stairs, had hit her head hard, was not feeling right or well, and needed to go to the hospital. Ms. Humble told Ms. Skallerup that the workplace was short-staffed and that Ms. Skallerup would have to stay. As Ms. Skallerup attempted to go about her duties, a coworker, Taylor, observed that Ms. Skallerup appeared unsteady and suggested to Ms. Skallerup that she might have a concussion. Taylor went to speak with Ms. Humble about Ms. Skallerup's condition. Taylor reported back to Ms. Skallerup that Ms. Humble had said she did not have time for Ms. Skallerup's "shit." Ms. Skallerup called for a ride to take her to a medical clinic and left for the clinic at about 8:30 a.m. The medical clinic staff had Ms. Skallerup transported to Mercy Hospital by ambulance. Ms. Skallerup was diagnosed with a neck sprain and concussion and was kept for observation for several hours. Between 7:00 and 8:00 p.m., Ms. Skallerup was discharged from Mercy Hospital with instructions to rest and avoid strenuous work. The doctor provided Ms. Skallerup with a medical excuse that took her off work on March 25, 2016. Ms. Skallerup needed to return to the hospital on the morning of March 25, 2016 for follow-up evaluation.

On the morning of March 25, 2016, Ms. Skallerup provided Ms. Humble with proper notice of her need to be absent that day due to her follow-up evaluation and indicated that she would come in around lunch time to speak with Ms. Humble. Later that morning, Ms. Skallerup appeared at the workplace and met with Ms. Humble. Ms. Skallerup provided Ms. Humble with the doctor's note to cover her absence. Ms. Skallerup also provided Ms. Humble with a written two-week notice that she would be quitting effective April 8, 2016. In the written notice, Ms. Skallerup cited an "ongoing hostile and discriminate work place" as the basis for her quit. Justin Terry, Director of Services for Southern Iowa, joined the meeting. At that point, Mr. Terry turned the meeting to a discussion of Ms. Skallerup's attendance. Ms. Humble and Mr. Terry then issued a written reprimand to Ms. Skallerup for attendance and included the early departure on March 24, 2016 on the warning.

Ms. Skallerup worked her notice period and voluntarily separated from the employment on April 8, 2016.

Though Ms. Humble's handling of the situation on March 24, 2016 triggered Ms. Skallerup's decision to leave the employment, that incident was but the last factor. Earlier in the employment, Ms. Skallerup had witnessed a coworker engage in behavior toward a client that Ms. Skallerup perceived to be abuse. When Ms. Skallerup pointed out the abusive nature of the conduct, the coworker threatened to harm Ms. Skallerup. Ms. Skallerup was a mandatory abuse reporter and reported the conduct to the Department of Human Services. Ms. Skallerup perceived that the employer undermined the state's investigation of the matter. Ms. Skallerup also believed that Ms. Humble had earlier in the employment purposely mishandled her need for leave under the Family and Medical Leave Act.

REASONING AND CONCLUSIONS OF LAW:

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.

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). 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. See 871 IAC 24.25.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). 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 voluntary quit based on intolerable and detrimental working conditions. Ms. Skallerup provided credible, internally consistent testimony. Her sworn testimony was consistent with a prior written statement and consistent with her oral statement to the claims deputy at the fact-finding interview. The weight of the evidence supports Ms. Skallerup's assertion that the employer responded to her need for emergency medical attention in a callous manner that immediately created intolerable and detrimental working conditions. Had Ms. Skallerup further heeded the employer's directive that she stay in the workplace on March 24, Ms. Skallerup might have suffered further injury and the employer would have borne responsibility for that further injury. The employer continued its callous approach to Ms. Skallerup's legitimate concerns into the next day, when Ms. Skallerup presented the employer with proof of her legitimate medical concern and her legitimate need to leave work the next day. Even though Ms. Skallerup had just given her notice that she was leaving the employment, the employer somehow deemed it appropriate to issue an attendance warning based on her need to leave work the previous day. The weight of the evidence establishes that Ms. Skallerup had additional legitimate concerns about matters from earlier in the employment and that she reasonably decided on March 25, 2016, to separate herself from the employment.

Because the administrative law judge concludes that Ms. Skallerup quit the employment for good cause attributable to the employer, she is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The May 5, 2016, reference 01, decision is reversed. The claimant quit the employment effective April 8, 2016 for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs