

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CARISSA A YANDERS
Claimant

NEW HOPE VILLAGE INC
Employer

APPEAL 15A-UI-12004-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/04/15
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 21, 2015 (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on November 16, 2015. The claimant participated personally. The employer participated through Jeff Krausman, Attorney at Law. Employer witnesses included Cindy Breck and Sonya Stearns. Jodie Jansen and Shannon Lux attended but did not participate. No documents were offered or admitted into evidence.

ISSUE:

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

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 sorter/receiver and was separated from employment on October 5, 2015; when she voluntarily resigned without notice. Continuing work was available.

The claimant has been diagnosed with multiple sclerosis (MS) and ankylosing spondylitis, two auto-immune disorders. As a result, the claimant felt she could no longer perform her job duties to the level she expected of herself. The employer had not disciplined the claimant for any matters related to the quality of her work at the time of her separation.

The night before the claimant resigned, she suffered from a particularly serious seizure and had a subsequent migraine headache. She text messaged her manager, Lisa Willis, to see if she could come in late the following shift. As the only other person who was full time, Ms. Willis was not happy with the request and stated it was not convenient for her. The claimant then asked about what was going to be done about FMLA and Ms. Willis stated the claimant would need to coordinate with human resources about it. The claimant elected to resign prior to discussing the matter with human resources and had not previously raised issues related to her diagnoses with human resources. The claimant did not present any medical documentation to the employer or

at the time of the hearing reflecting a doctor had advised her to resign from her position due to health issues. The claimant resigned because she determined there was no way to resolve the matters regarding her health, as they were progressive and degenerative issues.

Prior to the claimant's separation, she had contacted human resources regarding concerns about Ms. Willis' conduct; including how she treated customers, a phone call made to the claimant when not scheduled in which Ms. Willis had yelled at the claimant, and possible theft concerns. The employer, by way of Cindy Beck, intended to meet with the claimant to investigate the concerns but the claimant resigned before the scheduled meeting took place.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was without 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. 871-24.25(33) 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 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 § 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:

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

Iowa Code § 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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

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.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant voluntarily quit due to a personal health issue. The administrative law judge is sympathetic to the claimant's diagnosis of multiple sclerosis (MS) and ankylosing spondylitis, but no competent medical documentation was provided to the employer or at the hearing that corroborated the claimant was advised by a medical professional to resign from her position or that her personal condition was aggravated by her condition.

The claimant further testified that in light of her concerns with Ms. Willis, that there was "no way" the employer could have resolved matters to preserve employment because of the degenerative and progressive nature of her medical conditions that she believe warranted her resignation. Therefore, based on the evidence presented, the administrative law judge concludes, the claimant's reasons for quitting were personally compelling but not for a good cause reason under Iowa law. Benefits are withheld.

DECISION:

The October 21, 2015 (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

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