

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

YOSLADY RODRIGUEZ
Claimant

SEABOARD TRIUMPH FOODS LLC
Employer

APPEAL 20A-UI-11500-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/28/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant, Yoslady Rodriguez, filed an appeal from the September 10, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 12, 2020. The claimant participated. A Spanish interpreter from CTS Language Link assisted for the hearing. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer is a food processing plant. The claimant was employed full-time as a packer and was separated from employment on July 7, 2020, when she quit the employment. Continuing work was available.

Prior to quitting, claimant was granted a leave of absence because she had health conditions, which made her high risk if exposed to COVID-19. Claimant had been informed she would receive her salary while on the leave of absence, but when she did not, she faced financial hardship and had to return to work, even though she was uncomfortable.

Claimant stated she worked side by side with employees, approximately three feet apart. While employees had masks and a face shield attached to their helmets, usage was not enforced by employer. Claimant was concerned based upon masses of people sharing common spaces including lunch rooms and restrooms and stated she brought her own cleaning supplies to

sanitize because the common areas were not clean. Breaks and meals were not staggered to space people out, and many employees were absent due to contracting COVID-19.

Claimant stated the deciding factor that made her quit was learning that a co-worker she worked near had died of COVID-19. Employer did not inform employees or address any concerns. Claimant heard the information through the news. Claimant's co-workers had previously discussed concerns with management and human resources for employees, but no changes had been made. Based upon her increased health risk and concerns with safety, claimant quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.

Claimant had an intention to quit and carried out that intention by tendering a written resignation. As such, 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).

"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).

Claimant contends that she voluntarily quit due to intolerable working conditions, or unsafe working conditions, because she was not provided with proper protective equipment to reduce her risk of exposure to COVID 19. As such, if claimant establishes that she left due to intolerable or detrimental or unsafe working conditions, benefits would be 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 Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Bd.*, 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. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement

was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

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.

Iowa Admin. Code r. 871-24.26(2) 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:

(2) The claimant left due to unsafe working conditions.

The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). In this case, a reasonable person would have believed that claimant's working conditions were unsafe, intolerable and detrimental to the claimant due to the lack of safety procedures provided to employees to perform the job and the employer's guidelines that failed to properly protect her from infection. As such, the claimant's voluntary quitting was for a good-cause reason attributable to the employer according to Iowa law. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The unemployment insurance decision dated September 10, 2020, (reference 01) is reversed. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.



Jennifer L. Beckman
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November 18, 2020
Decision Dated and Mailed

jlb/scn