

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JODY M MCFADDEN

Claimant

APPEAL NO: 19A-UI-04219-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DES MOINES IND COMMUNITY SCHOOL
DISTRICT**

Employer

OC: 04/28/19

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Jody M. McFadden, filed an appeal from the May 14, 2019, (reference 01) unemployment insurance decision that denied benefits based upon the claimant's separation from this employer. The parties were properly notified about the hearing. A telephone hearing was held on June 18, 2019. The claimant participated personally. The employer participated through Rhonda Wagoner. Naki Allen testified for the employer.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Claimant Exhibit A (appeal letter) was admitted. 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.

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 special education associate and was separated from employment on April 25, 2019, when she quit the employment.

The claimant last performed work on April 12, 2019, when she was placed on paid administrative leave, pending investigation. The claimant was placed on leave in response to comments the claimant had made to a student and also to a coach outside of the school. While monitoring halls in March 2019, the claimant had reportedly said to a student who was roaming the halls that "I'm sure your coach wouldn't appreciate you skipping class." The claimant knew the student was a softball player on a non-school affiliated team, based on her own daughter's softball affiliation. The employer reported the claimant also reported the student's conduct to the coach, who in turn confronted the student, causing her to cry. The student's parents reported the incidents to the school, who then initiated the investigation.

The claimant acknowledged being previously suspended for three days in 2018 in response to sharing student information outside of school, but that in the most recent case, she was acting through the lens of parent and not an employee.

As a result of the employer investigation, a meeting was scheduled on April 25, 2019. The claimant stated her union representative and the principal met before the meeting and the union representative advised the claimant to quit the employment because she would be fired if she went to the meeting. The union steward did not attend the hearing and the claimant did not subpoena him to compel his attendance. The claimant then tendered her resignation, rather than confirm with the employer its intent to discharge her. The claimant quit to preserve her professional reputation.

The employer stated it had not made a decision yet whether to discharge the claimant or not, inasmuch as there were several steps required in the disciplinary process, including a due process meeting and a caucus.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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(37) 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 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d

676, 680 (Iowa 1986)). “The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith.” *Wiese v. Iowa Dep’t of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) “[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee’s quit in order to attribute the cause for the termination.”

In this case, the claimant left while under investigation, after believing she would be discharged. The claimant believed she would be fired based on information given to her by a union representative, and not management of the employer. The claimant chose to resign to preserve her professional reputation. An individual who leaves employment because she is instructed to do so by his union leaves that work without cause attributable to the employer. *Walles v. IESC*, 219 N.W.2d 539 (Iowa 1974). The union is not an arm of the employer, and by function, independently operates. The credible evidence does not substantiate that the employer intended to discharge the claimant on April 25, 2019, or offered the claimant the option to resign in lieu of termination at the time when she resigned, but rather an ongoing investigation was taking place.

While the claimant’s decision to voluntarily quit the employment may have been for personally compelling reasons, it was not for good cause attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The May 14, 2019, (reference 01) decision is affirmed. The claimant quit 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. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs