

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARISSA NED
Claimant

APPEAL 15A-UI-02573-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TANAGER PLACE & CAMP TANAGER
Employer

OC: 02/01/15
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 16, 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 March 31, 2015. The claimant participated. The employer participated through Mike Kilburg. Kathy Crantz was an observer.

ISSUE:

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: The claimant was employed full time as a health counselor and was separated from employment on February 2, 2015 when she resigned via email without notice. Continuing work was available.

The employer's business serves children with mental illness. At the time of separation, the claimant was 26 weeks pregnant and was assigned to a group of children in a cottage and had one-on-one interactions with the children, ages five through seventeen. She was trained to build relationships with them, and in various de-escalation strategies including physical restraint when necessary.

Prior to resigning, the claimant had made the employer aware of some ongoing security concerns based on children threatening to punch her and hurt or kill her unborn child. The employer offered suggestions to her including using the backup paging system if a situation became escalated or locking herself in an office. There was no job available to the claimant that she could avoid interaction altogether with children, who occasionally became escalated and may need physical restraint. The claimant indicated at least three children had made threats of physical violence to her. On the final day of employment, a child threatened to harm to her baby. Based on the claimant's fear for the safety of herself and her unborn child, she resigned via email without notice.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment 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(2) and (4) provide:

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.

(4) The claimant left due to intolerable or detrimental working conditions.

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 Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 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 recently 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).

In this case, the claimant and her unborn child were being threatened of physical harm. The claimant sought out solutions and isolation techniques but could not avoid the exposure to threats or possibly having to use physical restraint on a child altogether. It is understandable that the employer would have limited options in removing the claimant from all potentially harmful or physical exposure, given the population it serves, but it does not negate the fact the claimant experienced real and actual threats to herself and her child. The administrative law judge is persuaded that the claimant voluntarily resigned due to unsafe work conditions, which were attributable to her employer, and therefore, is eligible for benefits.

DECISION:

The February 16, 2015 (reference 01) decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

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