

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROSS B NELSON

Claimant

2 FOR U CHILDCARE WEST LLC

Employer

APPEAL NO. 20A-UI-13164-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20

Claimant: Appellant (1R)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 12, 2020, reference 01, decision that disqualified him for benefits and that stated the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on July 7, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on December 21, 2020. Claimant participated. The employer did not provide a telephone number for the hearing and did not participate. Exhibits A and B were received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO and KPYX) and of the claimant's weekly claims (KCCO).

ISSUE:

Whether the claimant's voluntary quit was without good cause attributable to the employer.
Whether the claimant was able to work and available for work during the period of July 5, 2020 through August 8, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has worked for the employer during multiple distinct periods. The most recent period of employment began in the fall of 2019 and ended on July 6, 2020, when the claimant voluntarily quit. The claimant worked as a part-time daycare teacher assigned to care for and supervise four-year-olds and five-year-olds. The claimant usually worked 30 hour or more per week. The employment was not supplemental in nature. Jane Babcock, who was sometimes the director and sometimes the human resources representative, was the claimant's supervisor.

The claimant suffers from chronic kidney disease. The claimant left the employment after concluding that the workplace was unsafe. The claimant deemed the workplace unsafe because the employer did not require anyone to wear masks and did not require social distancing. The claimant routinely worked with young children moving about in close proximity. The claimant did not consult with a doctor prior to quitting the employment. The claimant did not request that the employer make any workplace changes or provide any reasonable

accommodation prior to quitting the employment. The claimant had not accepted other employment prior to quitting this employment.

On July 16, 2020, 10 days after the claimant's separation from the employer, the claimant obtained a note from his primary care physician that stated he needed to work in an environment with less exposure to COVID-19. The claimant did not consult with his nephrologist.

The claimant established an additional claim for benefits that was effective July 5, 2020. The claimant made weekly claims for each of the five weeks between July 5, 2020 and August 8, 2020. During that time, the claimant remained physically and mentally able to work and remained available for work so long as the work did not interfere with his 6:00 p.m. jujitsu practice. For the five weeks in question, the claimant made one or two job contacts per week. During these five weeks, Iowa Workforce Development waived the work search requirement. The claimant received \$455.00 in regular benefits for the period of July 5, 2020 through August 8, 2020. The claimant received \$1,800.00 in Federal Pandemic Unemployment Compensation (FPUC) for the three weeks between July 5, 2020 and July 25, 2020. The claimant received \$600.00 in Lost Wages Assistance (LWA) for the two-week period of July 26, 2020 through August 8, 2020.

The claimant accepted new part-time employment with Amish House in mid-August 2020 and discontinued his claim for benefits at that time.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(d) 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. 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.

Iowa Administrative Code rule 817-24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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.

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

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

...

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

The test is whether working conditions were intolerable and/or detrimental 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 evidence in the record establishes a voluntary that was without good cause attributable to the employer. The claimant's voluntary quit was not based on advice from a physician at or before the time of the quit. The claimant unreasonably took no steps to bring his health concerns to the attention of the employer or to give the employer a reasonable opportunity to address or accommodate those concerns prior to leaving the employment. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The evidence indicates that the claimant met the able and available requirements during the five weeks between July 5, 2020 and August 8, 2020.

DECISION:

The October 12, 2020, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account will not be charged. The claimant met the able and available requirements during the five weeks between July 5, 2020 and August 8, 2020.

This matter is remanded for entry of overpayment decisions regarding the benefits the claimant received for the period of July 5 2020 through August 5, 2020.



James E. Timberland
Administrative Law Judge

February 2, 2021
Decision Dated and Mailed

jet/mh

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you will be required to repay the benefits you have received.**