

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**LYNDA K ALLEN**

Claimant

**APPEAL 21A-EUCU-00032-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JOJO'S DAIRY QUEEN**

Employer

**OC: 12/15/19**

**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

On January 27, 2021, Lynda Allen (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated January 20, 2021 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on September 29, 2020 for reasons not caused by employer.

A telephone hearing was held on April 1, 2021. The parties were properly notified of the hearing. The claimant participated personally. Jojo's Dairy Queen (employer/respondent) participated by Co-Owner Kirk Thedens. Manager Dawn Harriman participated as a witness for employer.

Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer part-time as a general worker. Claimant's first day of employment was September 1, 2020. The last day claimant worked on the job was September 25, 2020. Claimant's immediate supervisor was Harriman. Claimant separated from employment on September 29, 2020. Claimant resigned on that date.

Claimant left early on September 25, 2020, due to an emergency. Harriman contacted claimant the following day to make sure she could come into work that day. Claimant indicated she would not be able to come in on that day, September 26, 2020. Harriman told claimant that was fine and said they would see her for her shift on Monday, September 28, 2020.

Claimant did not appear for work on that date or call in to report her absence. Employer attempted to contact claimant on that date but was unable to reach her. Claimant was also scheduled to work on September 30, October 1, and October 2, 2020, but did not call in or report for work on

those days. Claimant knew or should have known she was scheduled to work on those dates, as the schedule was posted a week or more in advance. Claimant did not attempt to return to work after that date; she simply came in to hand in her uniforms and pick up her final check in early October 2020.

Claimant resigned because she believed employees were working when they had COVID-19 symptoms. However, claimant did not report this concern to employer and employer was not aware of employees working while having symptoms of COVID-19. Employer's practice was to hold people out of work if they had such symptoms until they had been tested and it was confirmed they could safely return to work. Claimant also resigned in part because she wished to be getting more hours than she was. However, there was no guarantee of hours at the time of hire and claimant had not secured work elsewhere prior to resigning.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons set forth below, the decision dated January 20, 2021 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on September 29, 2020 for reasons not caused by employer is AFFIRMED.

Iowa Code section 96.5(1)a 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 provides in relevant part:

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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

(18) The claimant left because of a dislike of the shift worked.

(21) The claimant left because of dissatisfaction with the work environment.

Iowa Admin. Code r. 871-24.26 provides in relevant part:

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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

Employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried her burden of proving the voluntary leaving was for good cause attributable to employer. Claimant has not shown that her working conditions were so unsafe, intolerable or detrimental as to justify quitting, particularly without first notifying employer of the concerns and allowing it a chance to investigate and correct any issues. Nor has she shown there was a change in the contract of hire justifying resignation. Indeed, it is puzzling as to why claimant would resign due to a lack of hours when she had not secured employment elsewhere, thus effectively reducing her hours and income even further.

Claimant's resignation is better characterized as being due to a dissatisfaction with her wages, her shifts worked, and the work environment. These reasons are presumed to be without good cause attributable to employer and the administrative law judge finds they are without good cause here. Benefits are therefore denied.

**DECISION:**

The January 20, 2021 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on September 29, 2020 for reasons not caused by employer is **AFFIRMED**. Claimant's separation from employment was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
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Fax (515) 478-3528

April 12, 2021  
Decision Dated and Mailed

abd/scn

**Note to Claimant:**

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.