

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**PATRICE GREEN**  
Claimant

**EJG MANAGEMENT, LLC**  
Employer

**DIA APPEAL 22IWDUI0130  
APPEAL 22A-UI-09797**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/12/21  
Employer: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The Employer, EJG Management, LLC (EJG), filed an appeal from the April 11, 2022 (reference 04) unemployment insurance decision that found the Claimant, Patrice Green, was eligible for unemployment insurance benefits due to her separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on June 29, 2022, by telephone. The Claimant appeared and was self-represented. The employer, EJG, participated through its representative, Holly Anderson. Official notice was taken of the administrative file which includes only the April 11, 2022 decision, EJG's April 18, 2022 request for appeal, and the notice of telephone hearing.

**ISSUES:**

Whether the separation was 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 was employed by EJG as a full-time crew member at a McDonalds restaurant. Generally, she worked an opening shift five days per week. Claimant began employment on July 24, 2021, and her last shift was worked on December 10, 2021. Claimant's hours were reduced to part-time in October 2021 due to her health. Claimant's immediate supervisor was Crystal Reuter. On December 14, 2021, Claimant came into the restaurant to pick up her paystub and was informed by another employee that she was no longer listed on the schedule to work. Claimant believed her employment had been terminated because she was not scheduled to work.

Later in December, 2021, Claimant sent a text message to Holly Anderson, general manager, requesting a copy of her paystub. Ms. Anderson asked where the Claimant had been, and the Claimant indicated her hours had been cut so she had gotten a new job.

Ms. Anderson testified that the Claimant missed multiple work shifts in November and early December 2021. She intended to suspend the Claimant's employment for the absences, but that suspension was never carried out and was never communicated to the Claimant. Ms. Anderson testified that she assumed the Claimant had quit because she did not return to work after December 14, 2021. She did not make any attempt to contact the Claimant.

The Claimant disputed Ms. Anderson's statement and testified that she did not miss any work shifts. There is no dispute that no one from EJJ ever told the Claimant that she was being terminated from employment. There is also no dispute that Claimant was not scheduled for any work hours when she went in to pick up her paystub on December 14, 2021. Neither party communicated with the other one at all until the Claimant sent a text to Ms. Anderson seeking her last paystub. Even then, there was no direct clear communication as to the nature of the separation from employment. The Employer testified that they assumed the Claimant had quit by not returning to work. The Claimant contends she believed her employment was terminated because she was removed from the work schedule.

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

The April 11, 2022 decision at issue in this appeal determined that the Claimant did not voluntarily quit, but was discharged by the employer. There was no evidence to the contrary, and no evidence of willful or deliberate misconduct by the Claimant. The Employer appealed that decision and contends that the Claimant did voluntarily quit her employment.

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. 871-24.25(20) 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.

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). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added 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 rule 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. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

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).

The claimant does not dispute that she made the choice not to return to McDonalds after December 14, 2021 when she learned she was no longer on the work schedule. She contends, however, that being removed from the work schedule was the equivalent to termination by the employer. She believed she had been terminated, and she denies quitting her employment. Even if Claimant's failure to return to McDonald's is viewed as quitting her employment, her decision not to return was a direct result of the employer removing her from the work schedule. There is simply no evidence in the record to support the Employer's position that the separation was a voluntary quit without good cause. As such, the April 11, 2022 decision is affirmed.

**DECISION:**

The April 11, 2022, (reference 04) unemployment insurance decision is affirmed. Benefits are allowed, provided Claimant is otherwise eligible.



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Emily Kimes-Schwiesow  
Administrative Law Judge

July 8, 2022

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Decision Dated and Mailed

EKS/aa

CC: Patrice Green, Claimant (by first class mail)  
EJG Management, LLC, Employer (by first class mail)  
Natali Atkinson, IWD (email)  
Joni Benson, IWD (email)

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.

**Case Title:** GREEN V. EJG MANAGEMENT LLC

**Case Number:** 22IWDUI0130

**Type:** Order

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Emily Kimes-Schwiesow", written in a cursive style.

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Emily Kimes-Schwiesow, ALJ