

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CHRISTINE BURKE**

Claimant

**APPEAL 20A-UI-04138-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CENTRAL IOWA HOSPITAL CORP**

Employer

**OC: 03/29/20**

**Claimant: Appellant (2)**

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Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.3(7) – Overpayment of Benefits

PL 116-136 § 2104 (B) – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the May 14, 2020 (reference 01) unemployment insurance decision that denied benefits based upon her voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on June 2, 2020. The claimant, Christine Burke, participated personally. Belinda Carpenter, April Tierny and Sydney Fortelka participated as witnesses on behalf of the claimant. The employer, Central Iowa Hospital Corporation, participated through witness Mitchell Spivey. Claimant's Exhibits A and B were admitted. The administrative law judge took official notice of the claimant's administrative records.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

Is the claimant overpaid benefits?

Is the claimant overpaid Federal Pandemic Unemployment Compensation?

**FINDINGS OF FACT:**

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

Claimant was employed part-time as a physician's assistant at the employer's hospital emergency room. She began working for this employer on October 22, 2015 and her employment ended on April 1, 2020 when she voluntarily quit. Her immediate supervisor was Proctor Lorman. Her job duties included treating patients that visited the emergency room.

Prior to quitting, the claimant expressed concerns with her supervisor and human resources that she had a medical condition that predisposed her to having severe complications if she were to contract the Coronavirus. See Exhibit B. Claimant's physician recommended that she not work in an area where she is exposed to respiratory infections. See Exhibit B. Claimant requested to be transferred to an area of the hospital where she would be at less of a risk of contracting COVID 19. Her request for transfer was denied. Claimant requested a leave of absence but

the human resources department informed her that her medical condition did not qualify for a leave of absence.

While claimant was working, she was instructed to re-use her single use mask until it was visibly soiled. She was given a paper bag to put her single use mask in to store until the next time she re-wore it. There were no face shields provided for use to protect her from infection. Claimant was instructed to re-use isolation gowns that were intended to be used once and then laundered. These gowns were taken out of a patient's isolation room and hung in the workspace so that another worker could re-use the gown without it being laundered. The nurses that the claimant worked with were not instructed to wear masks for the entire duration of their shifts and many times would not wear masks while they spoke to her about patients. The employer did not have any social distancing guidelines in place restricting employees from being near each other while they were completing tasks that would allow for social distancing. At one point, a respiratory therapist who was working on intubating two patients walked out of the patient room and into the main area and supply room where other co-workers were without properly disinfecting or changing their dressings.

The employer was not requiring patients or guests of the patient to wear masks unless they presented with symptoms of respiratory infection. The employees were instructed to re-use and share tapper hoods when they were intended for one-time usage. Because of these conditions, claimant felt that she had no choice but to voluntarily quit.

Claimant's administrative records establish that she received regular unemployment insurance benefits of \$2,180.00 from April 12, 2020 through May 9, 2020. Claimant also received Federal Pandemic Unemployment Compensation benefits of \$2,400.00 from April 12, 2020 through May 9, 2020.

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

For the reasons that follow, the administrative law judge concludes as follows:

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.

Claimant had an intention to quit and carried out that intention by tendering a written resignation. As such, 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).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)("The good cause attributable to the employer need not be based upon a fault or wrong of

such employer.”). Good cause may be attributable to “the employment itself” rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956).

Claimant contends that she voluntarily quit due to intolerable working conditions, or unsafe working conditions, because she was not provided with proper protective equipment to reduce her risk of exposure to COVID 19. As such, if claimant establishes that she left due to intolerable or detrimental or unsafe working conditions, benefits would be allowed.

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

Iowa Admin. Code r. 871-24.26(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:

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

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

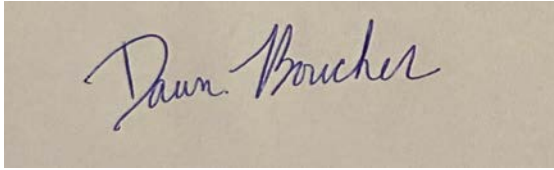
Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

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

The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). In this case, a reasonable person would have believed that claimant's working conditions were unsafe, intolerable and detrimental to the claimant due to the lack of personal protective equipment provided to her to perform her job and the employer's guidelines that failed to properly protect her from infection. As such, the claimant's voluntary quitting was for a good-cause reason attributable to the employer according to Iowa law. Benefits are allowed, provided the claimant is otherwise eligible. Because benefits are allowed, the issues of overpayment of benefits and overpayment of Federal Pandemic Unemployment Compensation are moot.

**DECISION:**

The May 14, 2020 (reference 01) unemployment insurance decision is reversed. Claimant voluntarily quit employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

June 18, 2020  
Decision Dated and Mailed

db/scn