

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SUANN VANDAELE

Claimant

APPEAL NO: 14A-UI-03376-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMFORT CARE MEDICARE INC

Employer

OC: 03/02/14

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 19, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Cedar Rapids, Iowa, before Administrative Law Judge Julie Elder on May 14, 2014. The claimant participated in the hearing with Attorney Lanny Van Daele. Lindsey Burton, Director of Human Resources; Susan Reighard, Director of Clinical Services; Julie Tow, Administrator; and Shantel Lehmann, Intern; participated in the hearing on behalf of the employer. Employer's Exhibits One through Five and Claimant's Exhibits A through F were admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time RN Case Manager for Comfort Care Medicare from November 15, 2006 to March 17, 2014. She voluntarily left her employment when she failed to return from Family and Medical Leave (FML) March 17, 2014.

The claimant sent a letter to Owner/Administrator Julie Tow November 15, 2013, stating she was resigning effective December 13, 2013. She sent the letter after driving home in the dark at 7:30 p.m. one evening and deciding she was overworked and no longer wished to continue her employment. On November 21, 2013, the claimant told the Director of Clinical Services Susan Reighard she wanted to rescind her resignation and the employer allowed her to do so.

On December 3, 2013, the claimant called Director of Human Resources Lindsey Burton to notify her that her daughter, who lives in California, was ill and consequently the claimant needed to go to her daughter's home to help her. She told Ms. Burton she purchased a plane ticket and was scheduled to leave December 17, 2013. The claimant agreed to keep in touch with the employer and Ms. Burton told the claimant she would need to complete FML paperwork. The claimant completed the FML paperwork and mailed it to the employer, who

received it December 17, 2013. The claimant indicated she needed to be off work from December 22, 2013, until a time to be determined, and checked the box on the paperwork stating she intended to return to work. Ms. Burton approved the claimant's leave December 17, 2013. On December 20, 2013, the claimant called Ms. Burton to update the employer regarding her daughter's medical condition and explained she needed to remain in California with her daughter until at least January 2, 2014, at which time her daughter had an appointment with a neurologist. The claimant also told Ms. Burton she was sending employment verification paperwork for her Medicare enrollment and consequently needed to cancel her medical insurance effective December 31, 2013, but would be keeping her dental insurance through the employer.

On January 13, 2014, the claimant called Ms. Burton to notify her that her daughter's neurology appointment had been moved to January 29, 2014. They discussed dropping the claimant's health insurance and continuing her dental insurance premium and Ms. Burton told the claimant she owed \$55.38 for her dental insurance. The claimant stated she had a return flight to Iowa March 1, 2014. Ms. Burton asked the claimant for a phone number to reach her in California if the employer had any other questions and also said Ms. Reighard wanted to talk to her to "check in and keep her updated with the clinical side of the company." The employer had been through a state audit in late 2013 and had received the results of the examination December 31, 2013. The claimant's daughter did not have a land line and the employer had difficulty contacting the claimant on her cell phone. The claimant gave Ms. Burton her daughter's cell phone number and Ms. Burton gave Ms. Reighard the phone number the claimant provided.

On January 13, 2014, Ms. Reighard called the claimant from her car on her way home from work after attempting to reach her several times previously. Ms. Reighard asked the claimant how she was doing and inquired as to the claimant's daughter's health. The claimant said she was doing "good" but was still trying to get medical insurance for her daughter and remained worried about her daughter's health. She stated she was grateful for being "allowed to use FMLA" to care for her daughter and Ms. Reighard said it was not a problem and was also a right afforded qualified employees. Ms. Reighard then brought up the fact that due to the length of the claimant's absence, and in light of the state audit and the deficiencies discovered, the employer had to "fill the office records position in Davenport at least on a temporary basis until she returned" (Employer's Exhibit Three). She also informed the claimant the employer was "moving forward with the conversion to an Electronic Medical Record" (Employer's Exhibit Three). The claimant asked Ms. Reighard, "What do you want me to do?" (Employer's Exhibit Three). She had asked Ms. Reighard and Ms. Burton several times in the past if she should retire or remain as an employee and both had repeatedly told her they could not make that decision for her; she needed to make it herself (Employer's Exhibit Three). Ms. Reighard again told the claimant she "could not make any decisions for her and that she needed to decide whatever was best for her" (Employer's Exhibit Three). The claimant asked if the employer still had her previous resignation letter and Ms. Reighard said she did not believe they did and if she intended to resign she needed to send a new letter to Owner/Administrator Julie Tow. She did not tell the claimant her employment was terminated or that she faced any disciplinary action. The employer was happy with the claimant's performance and people skills and did not wish to lose the claimant as an employee. After the audit the employer recognized there were certain areas they all needed to work on but the claimant was not singled out in that regard. After speaking to the claimant, Ms. Reighard called Ms. Burton and relayed the conversation, stating the claimant had indicated she was going to resign.

On January 17, 2014, Ms. Burton received a handwritten letter from the claimant which included a timeline of events to date and a check, with the incorrect amount, for her dental insurance coverage through March 30, 2014 (Employer's Exhibit Three). The letter did not mention the claimant's conversation with Ms. Reighard as it was written prior to the time she spoke to her. It also did not contain a resignation notice.

On January 20, 2014, Ms. Burton attempted to call the claimant about her check but did not receive an answer and could not leave a message as the phone's mailbox was full. On January 28, 2014, Ms. Burton again attempted to call the claimant about the check and to ask if she was resigning because the employer had not received a resignation notice from her yet, but was unable to reach her. On February 4, 2014, Ms. Burton attempted to call the claimant again for the same reasons but did not receive an answer. On February 11, 2014, Ms. Burton called the claimant again but the claimant did not answer. Later that day the claimant called Ms. Burton and she said she misunderstood the amount for the dental insurance and would send another check in the correct amount. She said she did not resign and was returning to Iowa March 1, 2014, and intended to return to work. The claimant explained she would need a few weeks to get settled upon her return and would be back at work March 17, 2014.

On March 5, 2014, the employer received a notice of claim from Iowa Workforce Development informing the employer the claimant had filed for unemployment insurance benefits. On March 12, 2014, the employer received a letter from the claimant asserting her employment was terminated by Ms. Reighard January 13, 2014, and asking how to obtain her personal property from the employer and return the employer's property in her possession.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

While the claimant maintains her employment was terminated by Ms. Reighard, the preponderance of the evidence demonstrates the claimant voluntarily quit her employment. The claimant asserts Ms. Reighard discharged her during their phone conversation January 13, 2014. Ms. Reighard, however, does not possess the authority to terminate an employee from her position with the employer. Additionally, the employer did not complete any termination paperwork or send the claimant legally mandated COBRA paperwork until after the fact-finding interview. Finally, the employer was very convincing in stating what a good and valued

employee the claimant was and conveying that she was definitely part of its plan going forward. Although the claimant may not have intended to resign she did initiate the resignation conversation with Ms. Reighard, after submitting and then rescinding her resignation in November 2013, and broaching the subject previously on numerous other occasions. The employer always responded to that topic in the same manner, telling the claimant she would have to make that decision herself and she should do what was best for her. This separation from employment may have been an unfortunate misunderstanding but the claimant left the employer sincerely believing she was resigning her position. The claimant has not alleged that her leaving was due to unlawful, intolerable or detrimental working conditions. Under these circumstances, the administrative law judge must conclude the claimant voluntarily left her employment without good cause attributable to the employer. Therefore, benefits are denied.

DECISION:

The March 19, 2014, reference 01, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs