IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

KATELYN M LUKAVSKY Claimant **ALICE'S RAINBOW CHILDCARE CTRS** Employer	**APPEAL NO. 22A-UI-05679-JT-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/06/22** **Claimant: Respondent (2)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On March 3, 2022, the employer filed a timely appeal from the February 28, 2022 (reference 01) decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on July 30, 2021 for no disqualifying reason. After due notice was issued, a hearing was held on April 13, 2022. Claimant, Katelyn Lukavsky, did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Erin Nicholson represented the employer. Exhibits 1 through 4 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO and KCCO.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without 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, Katelyn Kukavsky, was employed by Alice's Rainbow Childcare Centers, a licensed daycare facility, as a full-time lead teacher. The claimant began the employment in 2018 and last performed work for the employer on August 5, 2021. Erin Nicholson, Director, was the claimant's immediate supervisor. The claimant's usual work hours were 7:00 a.m. to 3:00 p.m., Monday through Friday.

Toward the end of the employment, the claimant had ongoing and worsening diagnosed health issue that impacted on her attendance. The claimant was under the care of a physician. The nature of the health issue made it so that the claimant would not know until she woke in the morning whether she would be well enough to report for work. The claimant provided appropriate notice to the employer when she needed to be absent from work due to her ongoing illness. The employer accommodated the claimant's health issues by allowing the claimant to nap during shifts as needed on those days when the claimant was well enough to work. The claimant's frequent absences made it difficult for the employer to staff the daycare facility within

state-mandated staffing ratios. Toward the end of the employment, the claimant had exhausted all available paid time off. The employer was aware that the claimant's unpaid time off created a financial hardship for the claimant's family. The employer suggested that the claimant apply for short-term disability benefits. The employer had the claimant and the claimant's physician complete an application for leave under the Family and Medical Leave Act (FMLA). The employer reached the point where the employer was unwilling, and determined it was unable, to continue the claimant in the full-time position due to the claimant's frequent absences. The employer discussed with the claimant modifying the claimant's employment status to part-time, two to three days per week. Though the matter was discussed, the employer did not notify the claimant the employer was going to implement the change in status and did not implement such change in the conditions of the employment. The claimant advised the employer that due to the nature of her illness, she would not know on those proposed two or three days whether she would be well enough to report to work until she woke for the day.

Prior to the employer suggesting that the claimant go off work, the claimant had not expressed an intention to separate from the employment and had instead expressed an interest in continuing in the employment. After the employer suggested that the claimant go off work, the claimant returned to the conversation and stated that she agreed she needed to focus on her health. The employer told the claimant that the employer would need to hire a replacement lead teacher, but that the employer would love to have the claimant return when her health improved. The employer does not require a resignation letter and the claimant did not provide a resignation letter. The claimant determined that her last day at work would be August 5, 2021. The employer continued to pay wages to the claimant through September 11, 2021.

The claimant established an original claim for benefits that was effective February 6, 2022. The claimant did not make weekly claims and did not receive unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

> Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
>
> a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory–taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.
>
> b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.
>
> c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.
>
> d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 Iowa Administrative Code rule 871-24.25.

The weight of the evidence in the record establishes a voluntary quit that was effective August 5, 2021. The claimant did not participate in the appeal hearing and did present any evidence to supplement or rebut the employer's evidence. The employer opening a discussion with the claimant regarding the claimant's frequent absences due to illness, the staffing issues that arose therefrom, additional accommodations there employer was willing to extend, such as going to part-time status, and whether the claimant should consider applying for short-term disability benefits, did not amount to the employer initiating a separation from the employment. Though the employer had the claimant complete an application for FMLA benefits, that also is not evidence the employer compelled the claimant to leave the employment. The evidence indicates that after the discussion with the employer left off, the claimant returned to the discussion and advised that she needed to separate from the employment to focus on her health. The voluntary nature of the separation is further indicated by the claimant determining when her last day would be.

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.

The evidence in the record establishes a voluntary quit without good cause attributable to the employer. The evidence indicates the claimant voluntarily separated from the employment due to a non-work related illness. The claimant presented no evidence to establish that her decision to leave the employment was medically necessary or that it was based on advice from a licensed and practicing physician. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

Because the claimant has received no benefits in connection with the claim, there is no benefit overpayment to address.

DECISION:

The February 28, 2022 (reference 01) decision is REVERSED. The claimant voluntarily quit the employment on August 5, 2021 without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

April 19, 2022
Decision Dated and Mailed

jet/mh