

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**LAURIE A BREDAR MCGEE**  
Claimant

**APPEAL 19A-UI-02923-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REM IOWA COMMUNITY SERVICES INC**  
Employer

**OC: 03/17/19**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

On April 8, 2019, Laurie A. Bredar McGee (claimant) filed an appeal from the April 3, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit employment with REM Iowa Community Services, Inc. (employer) because she was dissatisfied with the work conditions which does not constitute good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing began on April 26, 2019 and concluded on May 6, 2019. The claimant participated personally and was represented by John Graupmann. The employer participated through Program Supervisor Erica Dawson and Program Director Antione Harper and was represented by Karen Stonebraker. The Claimant's Exhibits E through G, J, and K were admitted into the record without objection. The Claimant's Exhibits A through D, H, I, and L were admitted into the record over the employer's objections on the basis of relevance.

**ISSUE:**

Did the claimant voluntarily quit the 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 full-time as a Direct Support Professional beginning on May 24, 2014, and was separated from employment on March 1, 2019, when she quit. The claimant worked from 11:00 p.m. to 9:00 a.m. at the same location with the same residents, DB and ZS. DB has autism and is non-verbal. ZS has cerebral palsy and intellectual impairments. The employer provides Physical Intervention Alternatives (PIA) training to its employees on how to non-physically stop an assault by a resident.

The claimant had multiple injuries as a result of physical incidents with residents. In April 2018, the claimant was showering DB. During the shower, he grabbed the claimant and pulled her. This caused her to lose her footing and sprain both of her feet. On October 22, 2018, the claimant and Program Supervisor Erica Dawson were getting DB ready for his day program. DB became agitated and threw the claimant across the room. The claimant's head was injured in the incident. After the October incident with DB, the claimant requested training on how to

work with each of the residents and their particular needs for her safety and the safety of other residents in the house. The employer was unable to provide the requested training by March 1, 2019.

On March 1, 2019, the claimant was waking ZS who punched her in the face. She had a split lip and loose teeth as a result. She notified the employer she was quitting and removed her personal belongings from the house where she worked. The claimant quit her employment because she no longer felt safe based on the physical incidents with the residents. The PIA training would not have helped her in any of the situations she had experienced over the previous twelve months and she did not believe the employer would provide training on how to keep her safe at work or take other steps to ensure her safety.

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

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed.

Iowa Code section 96.5(1) 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. 871-24.26 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.

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(2) or (4), the unsafe and intolerable working conditions provisions. The Iowa Supreme Court 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).

The 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 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). In this case, the claimant voluntarily quit work on March 1 when she notified her supervisor she was quitting and removed her personal belongings from the house where she worked.

The claimant has established that she was subjected to detrimental working conditions and that her work environment was unsafe. The claimant's job did require her to work with individuals who may act out physically through no fault of their own; however, the claimant requested the employer provide tools to keep her safe in those situations and the employer failed to provide those tools. While the employer was trying to get the claimant the training she requested, it was unable to provide that training in the four-month period between the October 22 and March 1 incidents. The claimant's belief that she would not receive the tools she needed to keep herself and others safe while working was reasonable given the employer's prior delay. The claimant voluntarily quit employment with good cause attributable to the employer. Accordingly, benefits are allowed.

**DECISION:**

The April 3, 2019, reference 01, unemployment insurance decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

src/scn