

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALDANA SELIMOVIC
Claimant

CATHOLIC HEALTH INITIATIVES – IOWA
Employer

APPEAL 20A-UI-04525-ED-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/05/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)A – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant 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 9, 2020. The claimant, Aldana Selimovic, participated personally. Becir Selimovic provided testimony on behalf of claimant. The employer, Catholic Health Initiatives – Iowa did not participate.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was claimant discharged for misconduct?

FINDINGS OF FACT:

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

Claimant was employed full-time as a registered nurse at the employer's hospital. She began working for this employer on October 17, 2011 and her employment ended on April 2, 2020 when she voluntarily quit. Her immediate supervisor was Randy Clogg. Her job duties included treating patients that were admitted into the hospital.

Prior to quitting, the claimant was assigned to care for patients who were diagnosed with Covid-19. Caring for Covid-19 patients required being in close, face to face proximity. At the time, the hospital did not have any N95 PPE. Protective equipment was on limited supply and could run out at any minute. Claimant was expected to re-use PPE and other safety equipment, wipe equipment down with sanitizer and hang the equipment on IV poles in the hallway until it needed to be reused. Many doctors and staff were avoiding entering rooms of patients diagnosed with Covid-19 at that time. During claimant's shift, four nurses, including claimant, were assigned to the unit that contained Covid-19 patients. Two of the other nurses were pregnant and did not treat any of the Covid-19 patients, leaving more of the exposure to

claimant. When claimant entered the rooms of Covid-19 patients, she did not have face shields or full protective suits for use to protect her from exposure. Because of these conditions, claimant felt that she had no choice but to voluntarily quit.

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 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:

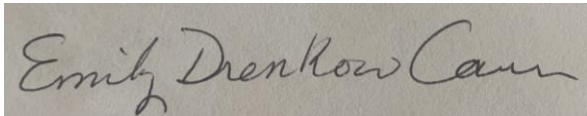
Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(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.

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.



Emily Drenkow Carr
Administrative Law Judge

August 7, 2020
Decision Dated and Mailed

ed/sam