

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SARAH J RITCHEY**  
Claimant

**BW GAS & CONVENIENCE RETAIL LLC**  
Employer

**APPEAL 21A-UI-13289-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/28/21  
Claimant: Appellant (5)**

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

**STATEMENT OF THE CASE:**

On June 1, 2021, Sarah Ritchey (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated May 27, 2021 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on May 25, 2020 for personal reasons.

A telephone hearing was held on August 10, 2021. The parties were properly notified of the hearing. The claimant participated personally. BW Gas & Convenience Retail LLC (employer/respondent) did not register a number for the hearing or participate.

Claimant's Exhibit 1 was admitted. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

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

Claimant worked for employer part-time as a cashier. Claimant began working for employer in November 2015. Claimant's immediate supervisor was Danyal Wobeke. The last day claimant worked on the job was in the end of March 2020. Claimant left employment at that time due to the pandemic. Claimant has health conditions which make her particularly vulnerable to the COVID-19 virus. Claimant has not expressly resigned. However, she has not attempted to return to work with employer due to continuing concerns about the pandemic.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons set forth below, the decision dated May 27, 2021 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on May 25, 2020 for personal reasons is MODIFIED with no change in effect.

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. 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 Admin. Code r. 871-24.25 provides in relevant part:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- a.* Obtain the advice of a licensed and practicing physician;
- b.* Obtain certification of release for work from a licensed and practicing physician;
- c.* Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- d.* Fully recover so that the claimant could perform all of the duties of the job.

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:

(6) 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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

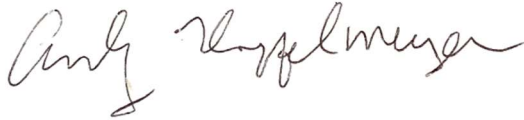
Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

Claimant did not expressly resigned from employer. However, she did leave employer at the end of March 2020 for medical reasons, and she has not returned to employer to offer her services since then. As such, for purposes of unemployment insurance law, claimant is considered to have voluntarily left employment without good cause attributable to employer. Benefits must therefore be denied. The decision is modified solely to reflect the date of and reason for separation.

**The administrative law judges notes that while claimant is disqualified from regular unemployment insurance benefits she may be eligible for Pandemic Unemployment Assistance (PUA). Information on how to apply for PUA is set forth below.**

**DECISION:**

The decision dated May 27, 2021 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on May 25, 2020 for personal reasons is MODIFIED with no change in effect. Claimant voluntarily left employment at the end of March 2020 without good cause attributable to employer. Claimant's separation from employment was disqualifying. Benefits must therefore be denied from the effective date of the claim. Employer's account shall not be charged.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

August 17, 2021  
Decision Dated and Mailed

abd/kmj

**Note to Claimant:**

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.