

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JUDY L JOHNSON**  
Claimant

**OPPORTUNITY VILLAGE**  
Employer

**APPEAL 20A-UI-04563-HP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/12/20  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Claimant Judy Johnson filed an appeal from the May 19, 2020 (reference 01) unemployment insurance decision that denied benefits based on her voluntarily quitting her employment with Opportunity Village on April 20, 2020. The parties were properly notified of the hearing. A telephone hearing was held on June 15, 2020. Johnson appeared and testified. No one appeared on behalf of Opportunity Village. Exhibits 1 through 3 were admitted into the record. I took administrative notice of the claimant's unemployment insurance benefits records maintained by Iowa Workforce Development.

**ISSUE:**

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

**FINDINGS OF FACT:**

Johnson commenced her employment as a personal care provider with Opportunity Village in December 2017. Johnson worked in a home, assisting five women over the age of fifty with cognitive difficulties who required care twenty-four hours per day. Johnson worked the overnight shift from midnight until 8:00 a.m. She cleaned up after the residents used the toilet, assisted with CPAP machines, and provided general oversight. Johnson's supervisor was Ray Makkar.

After Covid-19 developed, Opportunity Village provided five masks for the residents only. The staff could not require the residents to wear masks and could only suggest the residents stay in their rooms if they were ill.

Opportunity Village required the staff and residents to take their temperature daily using the same oral thermometer. Opportunity Village had the staff clean the thermometer with a Clorox wipe before each use. Johnson reported the taste of the wipe was terrible and she was concerned about using a thermometer used by other people. Eventually, Opportunity Village purchased a different thermometer to use on the forehead.

Johnson testified one resident coughed often, another sneezed often, and a third smoked cigarettes and coughed often. One of the residents sneezed directly in Johnson's face when she was helping her with her CPAP machine. Johnson cleaned her face in the bathroom as best as she could. Johnson asked Makkar for a mask two or three times and he said they were not necessary. Johnson could not find any masks for purchase.

Before Covid-19 developed, Johnson routinely sanitized doorknobs, her computer for charting, and the bathroom after the residents used the toilet. The residents often made a mess in the bathroom. Clorox wipes and gloves became in short supply. Opportunity Village only provided the staff two gloves per shift and told Johnson not to use the Clorox wipes during the overnight shift. Johnson felt unsafe and brought in her own Clorox wipes to wipe down the computer used by the staff. Toward the end of her employment, Johnson stopped using the bathroom because of her concerns about contracting Covid-19.

On April 1, 2020, Johnson called in to work and reported she was ill. Johnson had a sore throat, stomachache, and a headache. Opportunity Village asked if she had a fever. Johnson reported she did not, and Opportunity Village told she needed to report to work. Before Covid-19, Johnson was able to call into work when she was ill. Johnson reported to work even though she was ill.

On April 15, 2020, Johnson called Opportunity Village and spoke with Amanda, one of the schedulers. She told Amanda she could not work until it was safe. Amanda responded, "Okay, sounds good," and hung up. Johnson did not report to work and she did not hear from anyone at Opportunity Village until April 20, 2020. The last day Johnson provided services for Opportunity Village was April 14, 2020.

On April 20, 2020, Makkar called Johnson and told her if she did not report to work that night she would be terminated. Johnson told him she did not feel safe at work because there were no masks or disinfecting wipes for her to use. Makkar said "okay," and that is the last time Johnson has spoken with anyone from Opportunity Village.

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

Iowa Code section 96.5(1) provides an individual "shall be disqualified for benefits, regardless of the source of the individual's wage credits: . . . If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department." The Iowa Supreme Court has held a "'voluntary quit' means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer." *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires "an intention to terminate the employment relationship accompanied by an overt act carrying out the intent." *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). "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). The 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).

871 Iowa Administrative Code -24.25(21) provides:

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: . . . .

(21) The claimant left because of dissatisfaction with the work environment.

871 Iowa Administrative Code 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:

**24.26(4)** The claimant left due to intolerable or detrimental working conditions.

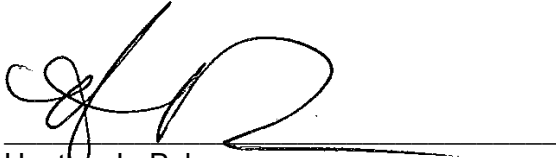
If the claimant establishes the claimant left due to intolerable or detrimental working conditions, benefits are allowed. Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 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. The Iowa Administrative Code was amended in 1995 to include an intent-to-quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision involving work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. The Iowa 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. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988) ("good cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Emp't Sec. Comm'n*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Emp't Sec. Comm'n*, 76 N.W.2d 787, 788 (Iowa 1956) ("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). Therefore, the claimant is not required to give the employer any notice with regard to the alleged intolerable or detrimental working conditions prior to her quitting. However, the claimant must prove the claimant's working conditions were intolerable or detrimental.

Johnson requested personal protective equipment from Makkar on several occasions. There were only two gloves per shift and no masks. Johnson regularly came in close contact with the residents with respiratory problems. One resident sneezed in her face during the pandemic. Johnson also asked for Clorox wipes to sanitize the computer used by staff, the doorknobs, sinks, and toilets. Johnson was told not to use them. I find Johnson has established the working conditions at Opportunity Village were unsafe, intolerable and detrimental and rose to the level where a reasonable person would feel compelled to quit and constitutes a good cause reason attributable to Opportunity Village for Johnson to have quit. Benefits are allowed.

**DECISION:**

The May 19, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is reversed in favor of the claimant/appellant. Benefits are allowed, provided the claimant is otherwise eligible.

A handwritten signature in black ink, appearing to read 'H. Palmer', is written over a horizontal line.

Heather L. Palmer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
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June 26, 2020  
Decision Dated and Mailed

hlp/scn