

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOANN FISCHER

Claimant

APPEAL 20A-UI-07880-J1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC

Employer

OC: 09/01/19

Claimant: APPELLANT (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On July 20, 2020, the claimant filed an appeal from the July 16, 2020, (reference 05) unemployment insurance decision that denied benefits based on voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on August 14, 2020. Claimant participated. Employer participated through Theresa McLaughlin, V.P. of Human Resources.

ISSUE:

Did claimant voluntarily quit with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on January 22, 2020. Claimant last worked as a part-time meat counter clerk in the Fareway store in Norwalk Iowa. Claimant would work in close proximity to co-workers and customers. Claimant was separated from employment on May 17, 2020 when claimant concluded she could not safely return to work. Claimant's last day physically at work was March 17, 2020. Claimant was experiencing flu symptoms and called and spoke to her supervisor Drew Eighmy on March 18, 2020. Mr. Eighmy took claimant off the schedule at that time. Claimant spoke to her doctor on March 18, 2020. Claimant was advised not to go to work and to self-quarantine. On March 26, 2020 claimant was still experiencing flu like symptoms and told Mr. Eighmy she was not able to return to work. Claimant is 66 years old and lives with her adult son who is a cancer survivor and has COPD. On May 13, 2020 the employer and claimant agreed that she was not coming back to work for Fareway and her employment relationship ended.

REASONING AND CONCLUSIONS OF LAW:

This decision must determine whether claimant's quit was with good cause attributable to the employer. "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).

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(1) 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:

- (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

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.

Claimant was hired before the Covid-19 crisis was part on her employment. Claimant is at an age that could make a Covid-19 infection more serious. At the time of her hire and until March 2020 dealing with exposure, with the risks of his exposure was not part of her job. Exposure to Covid-19 for her son could have been fatal. With Covid-19 there was a substantial change in claimant's job that affected her safety and safety of her son. I find the change in the employment condition resulted in a change in the contract of hire that was material and also made claimant's work unsafe.

I find claimant had good cause attributable to the employer for quitting employment. I find claimant is eligible for unemployment insurance benefits, provided he is otherwise eligible.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The July 16, 2020, (reference 05) unemployment insurance decision is reversed. Benefits are awarded, provided she is otherwise eligible.



James F. Elliott
Administrative Law Judge

August 21, 2020
Decision Dated and Mailed

je/scn