

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AUDREY A BIBBS
Claimant

AL ADL LLC
Employer

APPEAL 20A-UI-10500-BH-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/07/20
Claimant: Appellant (1)

Iowa Code section 96.5(1) – Voluntary Quit
Iowa Administrative Code rule 871-24.25 – Voluntary Quit Without Good Cause Attributable to the Employer
Iowa Administrative Code rule 871-24.26 – Voluntary Quit With Good Cause Attributable to the Employer

STATEMENT OF THE CASE:

The claimant, Audrey A. Bibbs, appealed the August 28, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a finding Bibbs voluntary quit her job with AL ADL, LLC (AL ADL) without good cause attributable to the employer. The agency properly notified the parties of the appeal and hearing.

The undersigned presided over a telephone hearing on October 26, 2020. Bibbs participated personally and testified. AL ADL participated through Christina Richter, who testified. Claimant's Exhibits A and B were admitted into evidence.

ISSUES:

Was Bibbs's separation from employment with AL ADL a layoff, discharge for misconduct, or voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

AL ADL hired Bibbs on November 11, 2019. She worked part time as a caregiver. On April 20, 2020, Bibbs voluntarily quit her employment with AL ADL.

AL ADL has a written attendance policy. Because AL ADL provides at-home care to clients, it requires employees to report an absence by calling in at least four hours prior to the start of a shift. Due to the nature of AL ADL's services and the vulnerable state of some of its clients, AL ADL deems one absence without notice to be a dischargeable offense. However, AL ADL management will investigate and issue a written warning if there is good cause under the circumstances.

AL ADL scheduled Bibbs to work on April 24, 2020. She did not show up to work and did not notify AL ADL until one hour after the scheduled start of her shift. Under the AL ADL attendance policy, this is considered a “no call/no show.”

Nonetheless, AL ADL did not discharge Bibbs. AL ADL management contacted Bibbs to see if she would be able to work her next shift, which was the night of Monday, April 27, 2020. Bibbs indicated she would be able to do so. But she wound up being absent and gave no notice.

AL ADL management tried to call Bibbs, but her voicemail box was full. They contacted her daughter, who also worked for the company and was listed as her emergency contact. Bibbs’s daughter did not know where she was.

AL ADL did not hear from Bibbs on April 28 or April 29. She was assigned to work on April 29 and May 1 with a client who is quadriplegic. Because AL ADL did not hear from Bibbs and the client needed care promptly at the start of the assigned shift, AL ADL reassigned Bibbs’s scheduled shift to another worker. Bibbs wound up being absent without notice for both shifts, so AL ADL deemed her to have quit by three consecutive no call/no shows under its policy (even though it was four consecutive no call/no shows).

Bibbs testified that she was assaulted. She was unsure of the dates. It is possible that the assault occurred around the time of her absences without notice.

Bibbs shared that her assailants also robbed her. One of the items they took was her phone. According to Bibbs, this left her unable to contact AL ADL until she could borrow her neighbor’s phone to call her daughter and get the AL ADL phone number, which she did not have memorized because it was in her phone. Bibbs testified she left a voicemail but did not hear back. AL ADL has no record of Bibbs having contacted management until July of 2020, when she called and made reference to documents that the attorney general would be delivering.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes Bibbs voluntarily left employment with AL ADL without good cause attributable to the employer under the Iowa Employment Security Law, Iowa Code chapter 96.

Iowa Code section 96.5(1) disqualifies a claimant from benefits if the claimant quit her job without good cause attributable to the employer. The Iowa Supreme Court has held that good cause requires “real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith.” *Wiese v. Iowa Dep’t of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). Moreover, the court has advised that “common sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee’s quit in order to attribute the cause for the termination.” *Id.*

According to the Iowa Supreme Court, 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 may be attributable to “the employment itself” rather than the employer personally and still satisfy the requirements of the Act. *E.g. Raffety v. Iowa Emp’t Sec. Comm’n*, 76 N.W.2d 787, 788 (Iowa 1956).

A burden-shifting framework is used to evaluate quit cases. Because an employer may not know why a claimant quit, the claimant has the initial burden to produce evidence suggesting the claimant is not disqualified from benefits under Iowa Code section 96.5(1) a through j and

section 96.10. If the claimant produces such evidence, the employer has the burden to prove the claimant is disqualified from benefits under section 96.5(1).

Iowa Administrative Code rule 871-24.25 creates a presumption a claimant quit without good cause attributable to the employer in certain circumstances. Iowa Administrative Code rule 871-24.26 identifies reasons for quitting that are considered for good cause attributable to the employer. Under rule 871-24.25(4), a claimant is deemed to have quit without good cause attributable to the employer if the claimant was absent for three days without giving notice to the employer, in violation of a company rule.

This decision will assume *arguendo* that Bibbs was assaulted around the time of her absences and her phone was stolen during the assault. The evidence shows that Bibbs called in sick one hour after the scheduled start of her shift on April 24, 2020, then informed AL ADL on April 27, 2020 that she could work that night before not showing up.

Assuming the assault occurred on April 27, and is the reason why Bibbs was absent without notice, there is no evidence that she contacted AL ADL on April 28 or April 29 regarding what happened. It is reasonable for an employer to expect some sort of communication regarding a past absence without notice and a future absence, even if the claimant is the victim of a traumatic experience such as an assault and robbery.

For these reasons, the evidence shows it is more likely than not Bibbs voluntarily quit employment with AL ADL under Iowa Code section 96.5(1) and rule 871-24.25(4) via three absences without notice, in violation of a work rule. Benefits are denied.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The August 28, 2020 (reference 01) unemployment insurance decision is affirmed. Bibbs voluntarily left employment without good cause attributable to AL ADL. Benefits are withheld until such time as Bibbs has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though Bibbs is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if Bibbs is eligible for such compensation for the week claimed.

This decision does not address whether Bibbs is eligible for PUA. For a decision on such eligibility, Bibbs must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.



Ben Humphrey
Administrative Law Judge

October 29, 2020
Decision Dated and Mailed

bh/sam

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.**
- For more information about PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-information>
- To apply for PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-application>