

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TRISHA M BOYLES
Claimant

KUM & GO LC
Employer

APPEAL NO. 20A-UI-16027-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/06/20
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 13, 2020, reference 01, decision that disqualified the claimant for benefits and that stated the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on June 15, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on January 29, 2021. The claimant participated. Tarik Bouhaik represented the employer. Exhibit A, an Iowa DHS Employer's Statement of Earnings, was received into evidence.

ISSUE:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Kum & Go as a full-time Food Assistant 1 at the employer's store on 86th Street in Johnston. The claimant's residence is in Des Moines. The claimant began the employment in October 2019. The claimant's usual work schedule consisted of 12:30 p.m. to 8:30 p.m. or 9:00 p.m. on Wednesday and Thursday, 10:00 a.m. to 6:00 p.m. on Friday, and 5:00 a.m. to 2:00 p.m. on Saturday and Sunday. The claimant had Mondays and Tuesdays off.

The claimant last performed work for the employer on June 14, 2020. The claimant's father had a heart attack on June 12, 2020. The claimant's father was at that time residing with the claimant's aunt in Indiana. The claimant's father was hospitalized until he was discharged to home on June 17, 2020. On June 18, 2020, the claimant notified the employer by text message that she had received a telephone call from her aunt, that her father was not doing good, and that she had booked an emergency plane ticket for Indiana for that afternoon. The claimant's supervisor responded by text message "no worries" and that hoped for the best for the claimant and her father.

About a week after the claimant went off work, the claimant contacted the employer with an update regarding her father's health. The claimant asserted a need to assist with her father's

care. Based on the claimant's asserted need to assist her father, the employer and the claimant agreed to a leave of absence with an August 11, 2020 return to work date. The agreed upon return to work date was based in large part on the claimant's need to return to Des Moines in time to get her 15 year old son and six year old daughter ready to start school at the beginning of the academic year. The claimant's children had participating in virtual learning from the time Des Moines schools closed for in-person classes in March 2020 through the end of the school at the start of June 2020. From March until the end the claimant left for Indiana in June, either the claimant's son or a grandmother would look after the six year old during those portions of Wednesday, Thursday and Friday when the claimant was at work.

Before the claimant went off work in June 2020, the claimant and her supervisor had discussed the claimant's desire to transfer to a Kum & Go store closer to her home as soon as that store was constructed and ready to open. The claimant's supervisor supported the transfer. The claimant understood that the claimant needed to participate in an interview with the other store's manager and be selected for one of the several positions open at the new store before a transfer could take place.

On July 6, 2020, the claimant's supervisor sent a text message to the claimant alerting her that the new store would be opening August 20, 2020 and asking whether the claimant would be back in Des Moines prior to the opening. The claimant responded that she would be back in Des Moines the week of August 10, 2020. The claimant added that she did not know what was going to happen with the start of the new school year. The claimant said that she would lack childcare for her six year old. The claimant stated that she might not be available to work until after her children returned to in-person classes. The claimant had decided not to continue with her prior child care arrangements. The claimant's son was planning to go live with his father at the end of August and would no longer be available to assist with caring for the six year old at that time. In connection with this contact on July 6, 2020, the employer advised the claimant the new store had a lot of open positions and that the general manager for the new store would need to conduct a phone or virtual interview if that worked for the claimant. The claimant replied that a phone or virtual interview would work. The claimant's supervisor advised the claimant that he would pass the information along to the area supervisor.

Within a couple days of the employer contact with the claimant about the timeline for opening the new store, the claimant contacted the employer for assistance with her application to the Iowa Department of Human Services for public assistance with her anticipated childcare expense. The claimant emailed a form for the employer to complete and return. The employer completed and returned the form on July 9, 2020. The form indicated the claimant commenced a leave of absence effective June 16, 2020 and was to return to work on August 11, 2020.

In connection with the connection with the contact on July 9, 2020, the claimant's supervisor advised the claimant that the new store was now scheduled to open on August 27, 2020 and offered shifts to the claimant at her assigned store for the period prior to the opening of the new store. The claimant declined the offer of shifts at her assigned store, said she would "wait it out," and said she could use the time "to get situated" with her kids.

As of July 26, 2020, the claimant's father's condition had substantially improved. In addition another of the claimant's aunt's had arrived to assist with the claimant's father's cares. At that point, it was no longer necessary for the claimant to remain in Indiana to assist with her father's cares. Rather than make arrangements to promptly return to Des Moines and to the employment, the claimant elected to prolong her stay in Indiana to August 2, 2020 so that she could spend time with family members.

The claimant returned to Des Moines on August 2, 2020, but did not make contact with the employer. The claimant did not take steps to return to work on August 11, 2020.

On August 13, 2020, the claimant's supervisor sent a text message to the claimant after he learned that the claimant had been a no-call/no-show for the scheduled interview with the manager of the new store. On August 13, 2020, the supervisor contacted the claimant regarding the missed interview. The supervisor told the claimant the he needed to know when the claimant would be returning to work so he could get her back on the schedule. The supervisor told the claimant that she need to get in touch with the company or the employer would have to let her go. On August 14, 2020, the claimant replied by text message that with everything going on with her father and with her daughter's situation she was not available for work with Kum & Go and that cutting ties was okay. The employer continued to have work available for the claimant. The claimant did not return to the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(c) 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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992).

Iowa Admin. Code r. 871-24.25(17) and (23) 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:

(17) The claimant left because of lack of child care.

...

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

Iowa Admin. Code r. 871-24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The evidence in the record establishes a voluntary quit without good cause attributable to the employer. The claimant commenced a leave of absence for the purpose of caring for her ill father. By July 26, 2020, the claimant's father had sufficiently recovered, had other assistance, and the claimant's assistance was no longer needed. The claimant elected to prolong her time away from the employment, rather than immediately returning and offering her services. The voluntary quit was effective July 26, 2020. The claimant elected not to return to work at the end of a leave of absence. The claimant elected to not return to the employment due to a purported lack of childcare. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The November 13, 2020, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective July 26, 2020. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.



James E. Timberland
Administrative Law Judge

February 16, 2021
Decision Dated and Mailed

jet/scn

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 on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA for the affected period, you will be required to repay the benefits you have received.**