

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

YESENIA QUINTEROS
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 23A-UI-06719-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/11/23
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On July 5, 2023, the claimant filed an appeal from the July 3, 2023, (reference 01) unemployment insurance decision that denied benefits based upon the determination that claimant voluntarily quit employment without a showing of good cause. The parties were properly notified of the hearing. A telephone hearing was held on July 25, 2023. The claimant, Yesenia Quinteros, participated personally. The employer, Swift Pork Company, did not participate. No exhibits were offered or admitted.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a rework employee from May 2011, until this employment ended on June 11, 2023, when she resigned.

For 10 years, claimant had been using FMLA due to her daughter's medical needs. Claimant had not had difficulty with her use of FMLA until 2023. Beginning in January or February 2023, claimant began noticing that a supervisor, Margaret, would make comments to claimant regarding her use of FMLA. Specifically, Margaret would say things like, "Hey, part timer," each time claimant returned from leave. Margaret also told claimant that she needed to be aware of how many hours she was using because Margaret stated she wanted to help claimant avoid discharge due to excessive use of FMLA. Margaret left the position around May 31, 2023.

Additionally, beginning in approximately March 2023, claimant would return from leave and be assigned to different job duties temporarily. Claimant was the only person doing rework on second shift. When she returned from leaves, the employer began sending her to different lines to run the fork truck or other duties claimant was trained to perform. However, it also expected claimant to complete her own duties in rework by the end of the week, no matter how much time she was assigned to other duties.

Claimant did not make a complaint to HR or express her concerns regarding these issues to anyone in a position of supervisory authority. She did not tell anyone that these concerns were causing her to consider quitting employment.

Claimant last worked on May 31, 2023. Thereafter, she went on a leave related to her daughter's hospitalization. During that leave, claimant concluded that she could not continue to deal with the issues at the employer, and she decided to resign from employment. On June 11, 2023, claimant went to the HR office and resigned. In her separation paperwork, claimant stated that she needed to take care of her daughter and that issues related to FMLA use and varying job duties were causing her too much stress to continue her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

Iowa Code section 96.5(1) provides: "An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department."

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "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 standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Emp't Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

Where a claimant gives numerous reasons for leaving employment the agency is required to consider all stated reasons which might combine to give the claimant good cause to quit in determining any of those reasons constitute good cause attributable to the employer. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534 (Iowa 1985).

Iowa Admin. Code r. 871—24.25(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:

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

In order for claimant to demonstrate that she quit with good cause attributable to the employer, she must demonstrate that she quit due to intolerable, detrimental, or unlawful working conditions. She has not so demonstrated here. While claimant likely had reasonable concerns about Margaret's ongoing statements related to her use of FMLA, claimant has not demonstrated that these comments were so offensive or excessive as to constituted unlawful harassment. Furthermore, claimant did not complain to the employer about Margaret's conduct, so she did not give the employer the opportunity to address the conduct before claimant resigned. Finally, claimant acknowledges that Margaret left the position she had been in around the time that claimant began her final leave, which would suggest that the issue might have been resolved by the time claimant was expected to return to work.

As to the concerns regarding different job duties assigned upon return from leave, the administrative law judge has determined this issue also does not constitute a good-cause reason for leaving employment. Claimant acknowledged that these differing job duties were temporary, so they did not constitute a change in the contract of employment. However, in addition, claimant also never made a complaint about this conduct to HR or a member of management. The employer was not given the opportunity to address these concerns, either. Claimant has not met the burden of establishing that she quit the employment with good cause attributable to the employment. Benefits must be denied.

DECISION:

The July 3, 2023, (reference 01) unemployment insurance decision is AFFIRMED. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

July 26, 2023
Decision Dated and Mailed

ar/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.