

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

KASIMA SMAJLOVIC
Claimant

APPEAL NO. 12A-UI-11880-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**WAUKEE COMMUNITY SCHOOL
DISTRICT**
Employer

OC: 09/02/12
Claimant: Appellant (1)

Iowa Code § 96. 5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 26, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on October 29, 2012. Claimant participated. Employer participated through CFO Laura Appenzeller-Miller, director of nutrition, Jeanie Allgood, and district nutrition supervisor, Carla Anderson.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a kitchen worker at Eason and was separated from employment on September 7, 2012. Claimant believed she and her son were harassed by coworker Sherry Strong in May. She was not advised by physician Robert Shires, M.D. to not return to the employer until September 28, 2012, after the voluntary separation on September 7. Anderson was aware of the Strong issue on May 22, 2012. As a part of her job duties, Strong asked every child if they had hot or cold lunch and claimant was upset Strong asked her son Assim. Anderson believed the issue was resolved in May and accommodated the claimant's son but claimant removed him from school in August after a meeting with a principal who did not have the authority to move him to another school according to district rules. On July 26 union representatives and Allgood met with claimant, reviewed her concerns, and offered her other full- or part-time work in another school, which the claimant declined. Claimant was a no-call/no-show the last week of school. On August 29 she called Anderson about her anxiety so Anderson told her she had 5.75 days of sick leave left. Claimant told Anderson she could not work with Strong because of the May issue. She did not work between August 31 and September 4, some of which were no-call/no-show absences. Anderson asked claimant for medical documentation on August 29. On August 30 a medical note was faxed with an undetermined return date. The next communication was claimant's resignation letter without any indication of medical advice to quit. Continued work was available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

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 Code § 96.5-1-d provides:

An individual shall be disqualified for benefits:

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:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.25(6) and (25) provide:

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 § 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 § 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:

(6) The claimant left as a result of an inability to work with other employees.

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

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

Since claimant did not obtain or present medical evidence of advice not to return to work there until a few weeks after the separation, it was not a reason for quitting. The employer acted reasonably about her concerns and accommodated her where possible. While her leaving the employment may have been based upon good personal reasons, it was not a good-cause reason attributable to the employer for leaving the employment. Benefits must be denied.

DECISION:

The September 26, 2012 (reference 01) 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.

NOTE TO EMPLOYER:

If you wish to change your mailing address of record please access your account at: <https://www.myiowauui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

<http://www.youtube.com/watch?v= mpCM8FGQoY>

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css