

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DESTINEY A HURSTROM
Claimant

KWIK TRIP INC
Employer

APPEAL 21A-UI-06730-ML-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/17/21
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 1, 2021, (reference 01) unemployment insurance decision that denied benefits based upon her voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on May 10, 2021. The claimant, Destiney Hurstrom, participated personally. The employer, Kwik Trip Inc., participated through Human Resources Employment Specialist, Emily Speropulos.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a Guest Services team member. In this position, claimant handled a number of different jobs. Depending on the day, claimant would work in the kitchen, in the bakery, or as a cashier. Ms. Hurstrom worked third shift. She began working for this employer on November 21, 2020, and her employment ended on January 25, 2021. Her immediate supervisors were Linda Stewart and Mariah Beals.

In January, 2021, Ms. Stewart began conducting staff meetings with all third shift employees. The meetings were scheduled to address an apparent issue with third shift repeatedly failing to adequately prep the store for the next morning. Ms. Stewart told her employees she would be reviewing security footage in hopes of figuring out what was ultimately causing the issue. Ms. Stewart encouraged her employees to come forward with any information they possessed regarding the same.

A few days later, claimant met with Ms. Stewart. During the meeting, claimant disclosed that one of her co-workers was not pulling her weight during the third shift. Claimant provided Ms. Stewart with a number of “timestamps” she felt Ms. Stewart could use as part of her

investigation. While the recordings were not entered into evidence, claimant testified to their contents. Claimant testified to one instance in which she approached the idle co-worker and pointed out all of the tasks the co-worker could be working on. According to claimant, the co-worker refused to complete any of the tasks. Claimant believed that her conversations with Ms. Stewart were going to be kept confidential. It does not appear as though this ended up being the case.

On January 23, 2021, claimant reported to work for her regularly scheduled shift, from 10:00 p.m. to 6:00 a.m. At some point during her shift, claimant asked the co-worker in question for assistance. According to claimant, the co-worker ignored her requests and refused to help. The co-worker would later confront claimant in the kitchen about talking to Ms. Stewart. Claimant testified that the co-worker yelled at her and told her that her days working for Kwik Trip were numbered. Claimant subsequently took a break and called both Ms. Beals and Ms. Stewart. Claimant ended up leaving Ms. Stewart a voicemail, stating she did not feel comfortable at work and she did not want to go back inside to finish her shift. Claimant asked Ms. Stewart if she could leave work early as a result of the aforementioned confrontation. Claimant texted the same to Ms. Stewart at 1:53 a.m. on January 24, 2021. Ms. Stewart subsequently called claimant and told her she could go home. Ms. Stewart relayed that she would be talking to claimant's co-worker in the near future about the situation.

During claimant's next shift, Ms. Stewart called a meeting with claimant and her co-worker. According to claimant, Ms. Stewart reprimanded claimant's co-worker and told her, "this stops right now." In order for the timeline to add up, this meeting would have had to occur between 10:00 p.m. on January 24, 2021, and 6:00 a.m. on January 25, 2021.

Unfortunately, the discussion did not help matters. Claimant and her co-worker got into another verbal altercation during her very next shift, and claimant called Ms. Stewart for direction. Ms. Stewart drove to the store and conducted yet another meeting with claimant and the co-worker. Again, in order for the timeline to add up, this meeting would have had to occur between 10:00 p.m. on January 25, 2021, and 6:00 a.m. on January 26, 2021.

Following the meeting, claimant told Ms. Stewart she no longer felt comfortable working in such a hostile work environment. Ms. Stewart apparently apologized to claimant and asked for a chance to make things right. Claimant subsequently told Ms. Beals that she would not be coming in for her shift later that evening. She further relayed that she would not be returning to work at Kwik Trip, and that she had contacted the Kwik Trip corporate office regarding the alleged hostile work environment. Claimant would have had to relay the above message to Ms. Beal shortly after leaving the final meeting with Ms. Stewart on the morning of January 26, 2021, as claimant testified that Ms. Stewart texted her after learning about claimant's resignation from Ms. Beal, and Ms. Stewart texted claimant about her resignation on January 26, 2021, at 10:05 a.m.

In the text message, Ms. Stewart offered to schedule claimant for shifts in which she would not be working alongside the co-worker in question. The employer's representative testified that in these types of situations, employees are typically given the option of working different shifts, working out of a different store, or taking unpaid time off. Claimant declined Ms. Stewart's proposal, in part because she could only work third shift. Claimant believed such a proposal would result in her only working one or two shifts per week, assuming her co-worker could also only work third shift. Claimant did not feel as though her hours should be reduced because of another employee's issues with her.

Claimant had no written warnings issued to her during the course of her employment. There was continuing work available to her had she not quit.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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 had an intention to quit and carried out that intention by tendering her written resignation. As such, 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). Claimant contends that she voluntarily quit due to intolerable or detrimental working conditions.

Iowa Admin. Code r. 871-24.26(4) 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:

- (4) The claimant left due to intolerable or detrimental working conditions.

As such, if claimant establishes that she left due to intolerable or detrimental working conditions, benefits would be allowed. Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

"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). Therefore, claimant was not required to give the employer any notice with regard to the alleged intolerable or detrimental working conditions prior to her quitting. However, claimant must prove that her working conditions were intolerable or detrimental.

Given the facts of this case, claimant’s working conditions do not rise to the level where a reasonable person would feel compelled to quit. As such, she has failed to prove that under the same circumstances a reasonable person would feel compelled to resign. See *O’Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). Rather, the circumstances in this case seem to align with the conclusion that claimant was dissatisfied with her work environment in general. This is not a good cause reason attributable to the employer for claimant to have quit.

Iowa Admin. Code r. 871-24.25(6) 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 § 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.

The claimant’s voluntary quitting was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The March 1, 2021, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld in regards to this employer until such time as claimant is deemed eligible.



Michael J. Lunn
Administrative Law Judge

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May 25, 2021
Decision Dated and Mailed

mjl/ol

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.