

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

FRANCESCA A PAPAKEE
Claimant

SAC & FOX TRIBE
Employer

APPEAL 24A-UI-03458-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/03/24
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant, Francesca A. Papakee, filed an appeal from the March 21, 2024, (reference 01) unemployment insurance decision that denied benefits effective February 26, 2024, based upon the conclusion she was discharged for excessive absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on April 23, 2024, at 1:00 p.m. The claimant participated. The employer participated through Human Resource Specialist Francine Youngbear and Director of the Apprenticeship Program Matt Bear. Exhibits A, 1, 2, 3, 4, 5, and 6 were admitted into the administrative record.

ISSUE:

Whether the claimant's separation from work is disqualifying?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant has been employed by the employer several times since February 11, 2013. Most recently the claimant worked full-time as an administrative services instructor from October 3, 2022, until this employment ended on February 21, 2024, when she quit. The claimant's immediate supervisor was Director of the Apprenticeship Program Matt Bear.

The claimant signed an acknowledgment of the employee handbook on February 11, 2013. The employer's handbook states that termination can result from "an unauthorized absence of three consecutive days." The employer provided a copy of this provision of the handbook. (Exhibit 2) The employer's practice is that employees are to notify their immediate supervisor at least 24 hours in advance before an absence for a shift. The claimant worked Monday through Friday from 8:00 a.m. to 4:30 p.m.

The employer's FML policy

The handbook makes clear that the employer is a sovereign tribe. It further states it has "Family and Medical Leave" under the policy in the handbook, but it clarifies it does not have the same applicability as the Family and Medical Leave Act of the United States. The policy states that

eligible employees “who have worked 1,250 hours will have up to twelve weeks of unpaid leave within a twelve-month period.” (Exhibit 2) It states that requests for leave should be “submitted in writing to the employee’s supervisor and forwarded to the Human Resources Director.” The employee handbook then specifies that leave can be used for the following:

1. To care for a newborn child or a newly-placed adopted or foster child.
2. To care for a seriously ill child, spouse, parent or grandparent.
3. The employee’s own serious illness.

Sick leave

The employee handbook also states that paid sick leave must be the result of the employee or their “dependent’s illness, injury, or medical or dental treatments.” The sick leave policy states that requests for this type of leave must be made as far in advance as possible to provide coverage of shifts. It further states that requests for sick leave of more than one week should be submitted two weeks in advance. (Exhibit 2)

Annual Leave

Although not mentioned in the employee handbook, the employer had a practice of allowing leave to attend court functions. It also allowed employees to take annual leave, which was a form of leave that could be taken with at least 24 hours’ notice.

On February 6, 2024, the claimant’s youngest daughter was assaulted by her partner. The claimant’s daughter believed she lost consciousness at one point from the attack. He resides close to the claimant’s residence.

On February 7, 2024, the claimant sent a text message to Mr. Bear at 9:17 a.m. to inform him of the circumstances with her daughter. The claimant told Mr. Bear that she believed she would be able to get her daughter to press charges against her partner for domestic violence. The employer provided this text message exchange and ones referenced over the following days. (Exhibit 4)

On February 8, 2024, the claimant sent a text message to Mr. Bear fourteen minutes after her shift began to tell him that she had to be absent from work that day as well. She added in the same message that she may not be in for her shift on February 9, 2024. Mr. Bear warned her that three days of unauthorized leave would result in termination. He also told her to give at least 15 minutes’ notice that she would be absent. (Exhibit 4)

On February 9, 2024, the claimant was absent from work. She did not send a message to Mr. Bear that day. (Exhibit 4)

The following Sunday night, February 10, 2024, the claimant sent a text message to Mr. Bear that she could not go to work the following day on Monday, February 11, 2024. The claimant promised to be at work on February 12, 2024. She apologized for not giving at least 15 minutes notice for past shifts. (Exhibit 4)

On February 13, 2024, the claimant sent a text message to Mr. Bear informing him that she would be able to work on February 14, 2024. Mr. Bear asked if that meant that she would not be working on February 13, 2024. He reminded the claimant of the rule that the employer considered it grounds for termination if an employee had three unauthorized absences. He asked if she had filled out FML paperwork to cover the extended absence. Later that day, the claimant said she was going to use annual leave to cover her shifts for the remainder of the week.

On February 14, 2024, the claimant sent a text message to Mr. Bear reiterating that she would be taking the rest of the week off. Mr. Bear replied that annual leave was supposed to be requested in advance. He added that it could not be taken on a call-off basis. The claimant explained that she had to do whatever she could to help her daughter. She promised to pick up FML paperwork that day. The claimant also informed Mr. Bear that she would have to go to court on February 19, 2024, for an unrelated matter. The claimant clarified that she was going to fill out FML paperwork and that human resources told her that annual leave would be backfilled in after she was approved.

On February 15, 2024, Mr. Bear sent a message to the claimant stating that if she was filing FML paperwork, then her annual leave would be used prior to using FML leave. He apologized for being confused. The claimant promised to turn in FML documents that day.

On February 16, 2024, the claimant sent a text message to the claimant stating she would turn the FML documents that day.

On February 17, 2024, the claimant's daughter's partner was arrested.

On the following Sunday night, February 18, 2024, the claimant said that February 19, 2024, would be the final day she was off.

On February 19, 2024, the claimant requested that she receive leave until February 21, 2024. She added that she was still waiting for the doctor to sign off on the FML paperwork. The claimant promised to visit the employer's human resources office on February 20, 2024. The claimant was excused from her shift, so that she could comply with a subpoena for another case.

On February 20, 2024, the employer received a note from the court excusing the claimant from work on February 19, 2024, and February 20, 2024. The claimant did not contact the employer.

On February 21, 2024, the claimant did not contact the employer. This was the eleventh working day after she initiated her leave.

On February 22, 2024, the claimant brought in a doctor's note excusing her absences on February 7, 2024, February 8, 2024, and February 9, 2024. The employer excused her for those days, but Ms. Youngbear observed that the claimant would need a release to return to work to cover the remaining days. The claimant was given FML papers and asked to get authorization for the remaining days from her doctor.

On February 26, 2024, the employer determined the claimant should be terminated. The employer provided a copy of the termination notice. (Exhibit 1) The termination notice remarks that the claimant was gone from work from February 7, 2024, through February 23, 2024. It acknowledges the claimant was excused for being sick on February 7, 2024, February 8, 2024, and February 9, 2024. The claimant was similarly excused for being in court on February 19, 2024, and February 20, 2024, to comply with a subpoena duces tecum. Nevertheless, the termination notice states that the claimant was absent for six days without authorization. It concludes by stating the claimant's leave was approved under the guide that she was completing FML paperwork.

On February 29, 2024, the claimant provided completed FML paperwork to the employer. The doctor's note attached to the paperwork excused the claimant from her shift on February 7, 2024. It added that she was excused from work as needed for "one to two weeks."

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes claimant's separation from employment on February 7, 2024, was without good cause attributable to the employer. Benefits are denied.

Iowa Code section 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 Admin. Code r. 871-24.25 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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

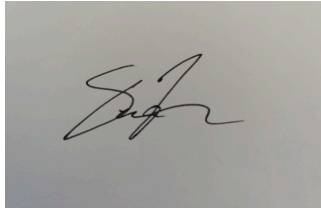
The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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).

The claimant was absent from February 7, 2024, until February 21, 2024, due to compelling personal reasons. February 21, 2024, was the eleventh day of this leave. I acknowledge that these were compelling personal reasons to be absent. The claimant was facing the profound abuse of her youngest daughter. These are not trivial concerns. Nevertheless, the claimant acknowledges that these concerns caused her to discard her concerns for the employer. The claimant did not follow the notice requirements for calling in several days. She did not follow the policies regarding leave. These actions and omissions in tandem with her lack of concern about maintenance of her employment constituted her quitting.

While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The March 21, 2024, (reference 01) unemployment insurance decision is AFFIRMED. The claimant voluntarily left her employment on February 21, 2024, 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.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is centered within a rectangular box.

Sean M. Nelson
Administrative Law Judge II
Iowa Department of Inspections & Appeals
Administrative Hearings Division – UI Appeals Bureau

May 3, 2024
Decision Dated and Mailed

smn/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
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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.