

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

SANDRA A KARKOSH
Claimant

APPEAL 24A-UI-01162-PT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLEAR CREEK-AMANA COMM SCH DIST
Employer

**OC: 12/31/23
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Sandra Karkosh, filed an appeal from a decision of a representative dated January 24, 2024, (reference 01) that held claimant ineligible for unemployment insurance benefits after a separation from employment. After due notice, a telephone hearing was held on February 20, 2024. The claimant participated personally. The employer participated through Human Resources Director Catherine Westfall. The administrative law judge took official notice of the administrative record.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant was employed as a full-time custodian with Clear Creek-Amana Community School District from August 19, 2015, until her employment ended on December 21, 2023. As a custodian, the claimant was responsible for cleaning the high school, removing trash, and cleaning the gymnasium after sporting events. The claimant typically worked Monday through Friday from 5:00 p.m. to 1:00 a.m.

In fall 2023, the employer hired a new custodian to work with the claimant at the high school. Shortly after the new custodian was hired, the claimant became concerned with the new custodian's work ethic and communication style. Specifically, the claimant felt the new custodian was rude to one of their coworkers, often told other employees what to do, and locked the gymnasium too early at night while parents were still in the facility.

In late November and early December 2023, claimant reported her concerns about the new employee to her supervisor several times. Claimant's supervisor reviewed the complaints, but did not address the complaints with the new employee.

On December 14, 2023, the employer called the claimant into a meeting and informed the claimant that she was being transferred to work in the administration building and that a new employee was being brought in to replace the claimant's position at the high school. The

employer explained that the claimant was being transferred because the new employee needed additional training and because of the claimant's ongoing concerns with her coworkers. The new job assignment required the same general job duties, provided the same pay and hours, and the building was near the high school where claimant worked. The employer gave the claimant the choice to either accept the transfer or resign. The claimant considered the offer for a day, but ultimately told the employer she would not accept the new assignment. The claimant did not return to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit her employment without good cause attributable to the employer. Benefits are denied.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left the employment. *Irving v. Empl. App. Bd.*, 883 N.W.2d 179 (Iowa 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It requires an intention to terminate the employment relationship accompanied by an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Here, the employer gave the claimant the choice to either accept a new job assignment working in the nearby administration building or resign. While the claimant stated she did not quit her employment, she did not accept the only position offered to her and she did not return to work for employer. The effect of not returning to work after being offered work is a quit. The employer has established that the claimant, not the employer, ended the employment relationship. As such, I find that the claimant quit her employment.

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). If the claimant fails to meet their burden, the separation from employment is disqualifying.

Iowa Admin. Code r. 871-24.25(6) and (21) 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 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:

(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.

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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire

A claimant may be eligible for benefits if they establish that there was a substantial change in the contract of hire. 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. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). The test is whether a reasonable person would have quit under the circumstances. *Aalbers v. Iowa Dept. of Job Service*, 431 N.W.2d 330 (Iowa 1988). "Change in the contract of hire" means a substantial change in the terms or conditions of employment. *Wiese v. Iowa Department of Job Service*, 389 N.W.2d. 676, 679 (Iowa 1986).

In order for claimant to demonstrate that her leaving was with good cause attributable to the employer, she must demonstrate that her working conditions were intolerable, detrimental, or unlawful, or that she was subjected to a substantial change in the terms of her contract of hire. Claimant has not demonstrated as much. While the claimant may have disliked working with one of her coworkers because she found her to be rude or overbearing, the evidence does not demonstrate that her coworker's conduct amounted to an unsafe, unlawful, intolerable, or detrimental working environment.

Moreover, while the employer gave the claimant the choice between accepting a new job assignment working in a different building or resigning, the administration building was near the high school where claimant worked and the claimant could have continued performing the same job duties, working the same hours, for the same pay. Under these circumstances, the claimant has not demonstrated that being transferred to the nearby administration building amounted to a substantial change in the terms or conditions of her employment. Taken together, while the claimant may have had good personal reasons for leaving, she has not demonstrated her reasons were good-cause reasons attributable to the employer according to Iowa law. As such, benefits must be denied.

DECISION:

The January 24, 2024 (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left her employment on December 14, 2023, without good cause attributable to the employer. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.



Patrick B. Thomas
Administrative Law Judge

February 26, 2024
Decision Dated and Mailed

pbt/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:

**Iowa 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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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.