

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELISSA A VANDERSCHAAF
Claimant

PLYMOUTH LIFE INCORPORATED
Employer

APPEAL 15A-UI-11006-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/06/15
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 23, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 15, 2015. Claimant participated. Tina Reis participated on behalf of claimant. Employer participated through attorney Gene Collins. Mr. Collins informed the administrative law judge that the witnesses registered on behalf of the employer would not be participating. Claimant Exhibit A was admitted into evidence with no objection.

ISSUE:

Did claimant voluntarily quit 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 full-time as a certified nursing assistant (CNA) and a certified medication assistant (CMA) from January 17, 2008, and was separated from employment on September 4, 2015, when she quit.

Claimant gave the employer her resignation notice, effective immediately, on September 4, 2015. Claimant quit because of a stressful and hostile work environment, the employer was short staffed, and she was required to modify patient records.

Crystallyn (a supervisor of claimant) wanted the employees, including claimant, to change documentation on patient records that had already been entered. These were medical documents. Claimant had been taught to not change medical documentation after it had been entered. Claimant had been taught not to delete something on a patient record that had happened. This was to keep accurate patient records. Claimant brought her concerns to Ms. Reis, the director of nursing (DON). Ms. Reis told claimant that she would talk with Crystallyn. Nothing changed after Ms. Reis brought the concerns to Crystallyn. Claimant also brought her concerns to the human resources director and the employer's CEO. They told claimant it was ok to modify the records. Claimant still did not think it was right. The employer told claimant if she did not do her corrections within a week, there would be a verbal warning

and a possible write up for discharge. Claimant did follow the directive and made changes. Some employees followed the directive, while some did not. Claimant followed the directive because she was afraid of losing her job. Claimant only followed the directive for one week. Claimant was afraid that modifying the patient records was Medicare fraud (false documentation). The employer wanted claimant to add different times so the patient records could be billed. Crystallyn was telling claimant to add time that she had not performed so that they could bill on the records. Crystallyn was telling claimant what time to add. If claimant provided a service to a patient that did not meet a certain length of time, the employer could not bill for it. The employer wanted claimant to change amount of time she provided the service to reflect a longer time so it would be eligible to be billed, even though she had not provided the service for this amount time. Claimant believes that had she made the modifications Crystallyn was ordering, the Board of Nurse would have taken her license. Ms. Reis found out from the Board of Nursing that deleting or editing an original patient record is wrong. Ms. Reis also found out that it is Medicare fraud to add time to a record that did not happen. Ms. Reis testified that modifying the records like this could have affected claimant's license and subjected her to a fine.

Claimant also complained to the employer about being short staffed. Claimant had to work past her scheduled end time on multiple occasions. The employer told her they were working on the staffing issues, but this went on for a few months and it did not appear to claimant that they were addressing the issue. Claimant was getting stressed that her complaints and concerns were not being handled by the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed.

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 Admin. Code r. 871-24.26(4) and (3) 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.

(3) The claimant left due to unlawful working conditions.

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).

On September 4, 2015, claimant resigned, effective immediately, from the employer. Prior to resigning, claimant had complained to her employer on multiple occasions about working past her shift and being ordered to modify patient records that claimant thought was illegal to do.

On multiple occasions claimant had to work longer than her scheduled shift because the employer was short staffed and she could not leave until a replacement was found. Claimant complained multiple times to the employer. The employer kept saying things would change, but for a few months nothing changed. Although claimant did not have the advice of a physician to quit the employment, a reasonable person or employer would know that being asked to work past your shift with no notice for months with no expectation of relief, is very likely to create an intolerable strain on even an otherwise healthy worker's physical and mental health. Thus, claimant has established good cause reasons for leaving the employment.

Furthermore, as a CNA, claimant did not think it was legal for her to change the original record and replace it with new information. Claimant brought her concerns to Ms. Reis. Ms. Reis contacted the Board of Nursing about the directive the employer gave claimant. The Board of Nursing said the directive would be illegal. Crystallyn told claimant that if she did not follow her directive, claimant would be disciplined. When claimant quit, the directive was still in place. This directive subjected claimant to potentially losing her CNA license and a fine. The employer's directive to its employees, including claimant, that they needed to modify patient records as Crystallyn directed, created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The September 23, 2015, (reference 01) unemployment insurance decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs