

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

AMY J WILLIAMSON
Claimant

APPEAL 22A-UI-08882-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF EDUCATION
Employer

**OC: 03/06/22
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 29, 2022, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit for reasons not attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on July 11, 2022. The claimant, Amy Williamson, participated personally. The employer, Iowa Department of Education, did not participate. Claimant's Exhibits A through G and claimant's appeal letter were offered and admitted.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time beginning May 4, 2007 as a data analyst for special education. Claimant was promoted to her next job as an administrative consultant in October 2010. In August 2012, Claimant was promoted to the position of Bureau Chief for School Improvement with the Department of Education. On October 15, 2020, the claimant was promoted to Deputy Director of the Department of Education. With her job as Deputy Director, her immediate supervisor became Department of Education Director, Ann Lebo. The last day claimant physically worked in that position was February 3, 2022. In the Spring of 2021, the claimant started to become concerned with some of the human resources policies initiated within the Department. The claimant was also concerned with Director Lebo's response when the claimant questioned the policies. The claimant felt like her concerns weren't taken seriously. After expressing her concerns to the Director about what she perceived as civil rights violations, the claimant waited approximately 6 weeks for the Director to take action. The claimant testified

that instead of remedying the civil rights violations, the Director doubled down on the employee at issue, issuing what the claimant felt was a penalty to the employee for dealing with an illness. Because the claimant did not feel the Director took her concerns seriously, on January 20, 2022, the claimant reported her concerns to the Governor's Office.

On February 1, 2022, the claimant was called into a meeting with Director Lebo. The claimant testified that the Director instructed the claimant to change an employee review as the employee did not meet the required deadlines. The claimant protested this as she felt the deadlines were met. The claimant also testified that the Director then told the claimant she was not pleased with her for talking to the Governor's office. The claimant responded that she told the truth as was her obligation as a manager in state government. The claimant stated that she was trying to protect the Director and the agency. The Director then said that the Department was re-organizing as she had a plan to deal with this. The claimant was no longer going to be managing K-12 education and they would hire someone new. Temporarily, the duties would be given to the Division of Community Colleges. Claimant's supervisory duties were reduced from supervising 138 people to three administrative consultants and a secretary. The Director then made an announcement to the Department regarding the re-organization.

On February 2, 2022, the claimant did not feel well but went to work. On February 3, 2022, the claimant experienced gastrointestinal bleeding and ended up in urgent care. Through a series of doctor's appointments, it was determined the claimant had had an acute stress reaction. The claimant's doctor took her off work for 6 weeks. In February 2021, the claimant's doctor faxed her completed FMLA paperwork to the Department. The same day, the claimant testified that she saw a job posting for an administrator at the Department with almost identical duties to her position, including supervision over all the programs and funds that the Director had removed from her weeks prior. See Exhibit F.

While claimant was still on FMLA, the claimant's doctor advised her not to return to the work environment because they believed her illness was a direct result of anxiety and stress from having her job duties taken away. The claimant's release to work date provided from her doctor was April 1, 2022.

On February 24, 2022, the claimant sent her resignation letter to Director Lebo and the Department Attorney. See Exhibit A. The claimant described in her resignation letter that after seeing her job duties posted, she had no faith that she will have a job at all when she returned from her FMLA leave. The claimant was never told exactly what her job duties would be when she returned. The Director was describing the re-organization to be more efficient, however, because she went on FMLA, they were unable to give the claimant an updated PDQ.

In the two years leading up to the reduction in her duties, the claimant testified that she would be out on leave and would continue to receive emails and phone calls from staff. However, during her FMLA in February 2022, no one contacted her regarding work. The claimant testified she did not know what the Deputy Director was supposed to do if she was not handling her previous duties.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged, claimant quit for reasons 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(21) 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:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

In this case, the claimant was not forced to resign. While her job duties were reduced by the Director, at no time was the claimant told that she was being given the choice of resigning or being discharged. Claimant's wages were not reduced. The claimant chose to resign. 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 has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

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); see also Iowa Admin. Code r. 871-24.25(35). 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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

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. Claimant had an intention to quit and carried out that intention to quit by tendering her resignation to the employer. 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). "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)("Good 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).

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.

Claimant may still be eligible for unemployment insurance benefits if she voluntarily quit due to intolerable working conditions. 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).

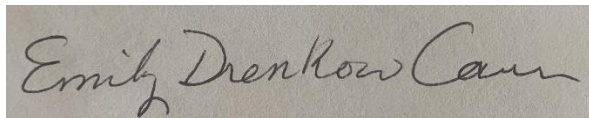
In this case of unrefuted testimony, the claimant’s job duties were taken away on February 1, 2022. The claimant believed this to be in response to her reporting civil rights concerns to the Governor’s Office. While claimant was out on FMLA in February 2022, she saw the job duties that were taken from her and temporarily placed with Community Colleges had been posted under a new job title. Although she had not received a new PDQ and had not been told what her job would be when she returned, Claimant knew her job would be substantially different when she returned to work. The unrefuted evidence presented does not show any deficiency in performance that was the result of intentional misconduct negligence. The claimant believed her reduction in duties to be a punishment for reporting her civil rights concerns to the Governor’s Office. Under the circumstances faced by the claimant, a reasonable person would feel compelled to resign. O’Brien v. EAB, 494 N.W.2d 660, 662 (Iowa 1993). As such, the claimant’s voluntary quitting was for a good-cause reason attributable to the employer according to Iowa law. Benefits are allowed, provided the claimant is otherwise eligible.

(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. Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant’s departure from employment was voluntary. Irving v. Emp’t Appeal Bd., 883 N.W.2d 179 (Iowa 2016). “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”. Id. (citing Cook v. Iowa Dept. of Job Service, 299 N.W.2d 698, 701 (Iowa 1980)). “Good cause” for leaving employment must be that which is reasonable to the average person,

not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005). 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. 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). 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 administrative law judge finds a reduction in job duties to the extent that the claimant went from supervising 138 people to 4 people, is a substantial change in the contract of hire such that claimant's voluntary leaving was with good cause attributable to employer. To the extent the change in position was a disciplinary demotion based on claimant's performance, the evidence presented does not show any deficiency in performance was the result of intentional misconduct or negligence rising to that level. The separation from employment was therefore not disqualifying.

DECISION:

The March 29, 2022, (reference 01) unemployment insurance decision is reversed. Claimant voluntarily quit 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.



Emily Drenkow Carr
Administrative Law Judge

__September 27, 2022__
Decision Dated and Mailed

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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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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.