

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JERI A FOREMAN**  
Claimant

**MERCY HEALTH SERVICES-IOWA CORP**  
Employer

**APPEAL 20A-UI-06935-S1-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/26/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
871 IAC 24.23(10) – Voluntary Leave of Absence

**STATEMENT OF THE CASE:**

Jeri Foreman (claimant) appealed a representative's June 17, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits due to voluntarily quitting with Mercy Health Services - Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 31, 2020. The claimant participated personally. The employer was represented by Frank Shoemaker, Agent, and participated by Paula Kruthoff, Chief Human Resources Officer, and Tim Mason, Nurse Manager.

**ISSUE:**

The issues include whether the claimant was separated from employment for any disqualifying reason, whether the claimant is available for work, and whether the claimant was on an approved leave of absence.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 3, 2016, and near the end of her employment she was working as a full-time registered nurse caring for adolescents with mental health issues. The employer moved to a different location in the summer of 2019. The claimant did not like the new location as well as the old location. Before the move, she worked with a co-worker. In the new location she worked alone. She wore a distress badge and carried a portable phone. She had access to help from roving staff and staff in the adult unit in the room next door. Her unit was monitored by cameras and help could arrive within seconds.

On July 24, 2019, there was an incident in the unit while the claimant was working and the police were called. The claimant discussed concerns with her nurse manager during her employment. There were no injuries in the unit after the move.

The claimant had a medical condition for which she took Family Medical Leave (FMLA). She took continuous FMLA from July 2019, through August 23, 2019. She had intermittent FMLA in 2018 and 2019. Stress aggravated her medical condition. On September 15, 2020, the claimant changed her status to part-time registered nurse to relieve some of her stress.

On October 30, 2019, the claimant met with her nurse manager and gave her resignation. She said she was resigning due to her health condition. The claimant did not tell the employer she was resigning because she did not like her work environment. The claimant's doctor did not tell her she had to quit work. She had FLMA that provided her days away from work, if needed, due to her health condition. The nurse manager and the chief human resources officer encouraged her to take time and think about her decision. On November 1, 2019, the claimant notified the employer she was going to resign. Continued work was available in her department and other departments had the claimant not resigned.

The claimant filed for unemployment insurance benefits with an effective date of April 26, 2020. Her weekly benefit amount was determined to be \$518.00. The claimant did not receive any unemployment insurance benefits or Federal Pandemic Unemployment Compensation after April 26, 2020.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

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

(21) The claimant left because of dissatisfaction with the work environment.

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). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. *Area Residential Care, Inc. v. Iowa Department of Job Service*, 323 N.W.2d 257 (Iowa 1982).

The claimant's intention to voluntarily leave work was evidenced by words and actions. The claimant told the employer she was leaving work due to her medical condition. The claimant's physician did not advise her to quit. The claimant failed to meet the requirements of the statute.

When employees quit work because of dissatisfaction with the work environment, their leaving is without good cause attributable to the employer. The claimant also left work because she did not like her work environment. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The next issue is whether the claimant was able and available for work. The administrative law judge concludes she is.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant has the burden of proof in establishing her ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). There has been no evidence offered to show the claimant is not able and available for work after her separation from employment.

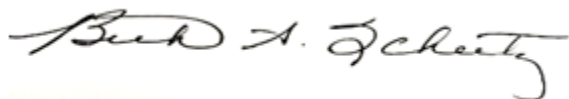
Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic

Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

**DECISION:**

The representative's June 17, 2020, decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible. The claimant is able and available for work.

*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 due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 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>.



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Beth A. Scheetz  
Administrative Law Judge

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August 7, 2020  
Decision Dated and Mailed

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