

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**AUDRA S ROWSON**  
Claimant

**HEARTLAND EMPLOYMENT SVCS LLC**  
Employer

**APPEAL NO. 21A-UI-00715-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/13/20**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 18, 2020, reference 01, decision that disqualified the claimant for benefits and that stated the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on September 23, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on February 10, 2021. The claimant participated. Beverly Peterson represented the employer. Exhibits A, B and C were received into evidence.

**ISSUE:**

Whether the claimant voluntary quit without good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was a registered nurse on parole following incarceration in prison on a felony conviction for conspiracy to deliver methamphetamine at the time Heartland Employment Services, L.L.C. hired the claimant in 2018 to be a full-time R.N. Supervisor at Manor Care Utica Ridge. Upon her release from prison, the claimant participated in a rehabilitation and supervision program operated by the Iowa Nursing Board as a condition of continuing her license. The claimant was ultimately non-compliant with the program's drug testing protocol and was discharged from the program in July 2020. The claimant last performed work for the employer on June 24, 2020. On or about that day, the Iowa Board of Nursing notified the employer that the claimant was being investigated by the Nursing Board, could no longer continue in her nursing duties, and that the employer was required to discontinue the claimant's services pending further notice from the Nursing Board. The Nursing Board declined to share with the employer details of the pending investigation. The claimant immediately went off work. On July 6, 2020, the employer and the claimant met to discuss the status of the claimant's nursing license and agreed that the claimant would immediately commence a leave of absence that would continue through August 3, 2020. August 8, 2020 came and went without the parties having contact to discuss the status of the claimant's nursing license or whether the claimant was cleared by the Nursing Board to return to the employment.

On or about September 23, 2020 the claimant contacted the employer. The claimant asserted that the Nursing Board investigator had authorized the claimant to return to work pending the outcome of Nursing Board investigation. The employer had received nothing from the claimant or from the Nursing Board to support the claimant's assertion that she was authorized to return to her nursing duties. At the time of this contact, the claimant notified the employer that she had decided not to comply with the Nursing Board oversight programming and would likely be surrendering her nursing license as part of resolution of the pending Nursing Board investigation. The claimant told the employer that she would only be able to return to work for a couple months pending the expected November 2020 resolution of the pending Nursing Board disciplinary proceeding. The employer declined to allow the claimant to return to the employment under the circumstances. The claimant subsequently surrendered her nursing license.

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

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See Iowa Administrative Code rule 871-24.25.

In *Cook v. Iowa Department of Job Service*, 299 N.W.2d 698 (Iowa 1980), the Iowa Supreme Court held that when a truck driver lost his insurability because of traffic tickets he accumulated, and thereby lost his ability to perform his driving duties, the loss was self-inflicted and constituted misconduct in connection with the employment. In *Cook*, the claimant's employment required that he be able to operate motor vehicles. Through commission of traffic offenses and resulting convictions, the claimant rendered himself incapable of continuing in the employment. In the present case...

Iowa Admin. Code r. 871-24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

Iowa Code section 96.5(1) 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.

The weight of the evidence establishes a voluntary quit that was effective August 3, 2020, when the claimant failed to return from the leave of absence. It was the claimant's decision not to comply with the licensure conditions that triggered the Nursing Board to notify the employer that the claimant could not continue in her nursing duties and that triggered the claimant's departure from her duties on June 24, 2020. Given the claimant's election not to comply with the nursing licensure requirement, the claimant's departure from work on June 24, 2020 was a voluntary leave of absence. The claimant did not return to the employment expiration of the leave of absence. The claimant's non return was a product of the claimant's continued election not to comply with the licensure requirements. The claimant's contact with the employer a month or more after the scheduled end of the leave of absence did not transform the separation based on the claimant's election not to comply with the licensure requirements into a discharge. The claimant did not provide the employer with anything in September or at any other time on or after June 24 2020 to indicate that the Nurse Board authorized her work pending the outcome of the Nursing Board investigation. Under the circumstances, neither a reasonable employer nor a reasonable administrative law judge would be satisfied with only the claimant's assertion that she was authorized to temporarily return to work in September 2020. In any event, the claimant continued to elect not to comply with the licensure requirements and by that election continued to elect to disqualify herself from further employment as a nurse with this employer. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

Under the rule in *Cook*, the outcome in this case would have been the same if the administrative law judge analyzed the separation as a discharge, as the claimant self-inflicted the licensure

discipline that disqualified her from continuing in the employment and thereby engaged in misconduct in connection with the employment. See Iowa Code section 96.5(2) (regarding discharge for misconduct) and Iowa Admin. Code r. 871-24.32(1)(a) (defining misconduct in connection with the employment).

**DECISION:**

The November 18, 2020, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.



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James E. Timberland  
Administrative Law Judge

February 26, 2021  
Decision Dated and Mailed

jet/scn

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>.