

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DIANE ERICKSON**  
Claimant

**THEISENS INC**  
Employer

**APPEAL 21A-UI-25218-ED-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/03/21  
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)A – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The Claimant filed an appeal from the November 5, 2021, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on January 11, 2022. The claimant, Diane Erickson, participated and testified. The employer, Theisen's Inc, participated through Heidi Lingle.

**ISSUE:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Was the claimant voluntarily discharged for disqualifying misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a cashier from June 4, 2018 until September 29, 2021 when she voluntarily quit. Claimant quit because she was having hearing loss and felt that she was being ridiculed at work due to the issue. Claimant described her hearing loss as severe. Claimant notified her employer of her hearing loss. Claimant would have problems talking with questions over the telephone. Claimant stated she asked her employer for assistance due to her hearing loss. On May 13, 2020 human resources was notified by management that claimant was having issues with her hearing loss. Claimant was asked to speak with her doctor to see if the doctor had any recommendations of radios or how to handle the hearing loss at work. Claimant's job was moved at one point from bookkeeper to cashier, but she was still experiencing problems with her hearing loss. The employer attempted to try other solutions such as using different hearing devices and headsets, but none of them worked for the claimant. Claimant resigned because none of the situations enabled her to handle the job with her hearing loss.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.



Iowa Code section 96.5(1)d 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. 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.

871 IAC 24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Empl. Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).



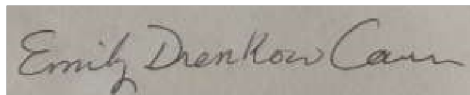
In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement added to rule 871-24.26(6)(b), the provision addressing work-related health problems. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Claimant decided to resign her position when her hearing loss made it difficult to do her job. Claimant spoke to his doctor about his symptoms, but was not advised by her doctor to resign. Claimant did speak to the employer about her hearing loss prior to resigning, and the employer attempted various accommodations such as the use of different headsets and changing her job from bookkeeping to cashiering.

Claimant has not established that the medical condition was work related or that treating medical personnel advised her to quit the job, as is her burden. Nor did she request accommodation from the employer that wasn't used before quitting. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

**DECISION:**

The November 5, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



---

Emily Drenkow Carr  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

February 2, 2022  
Decision Dated and Mailed

ed/kmj