

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CARMA M KILBURG
Claimant

WALMART INC.
Employer

APPEAL 21A-UI-09353-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/14/21
Claimant: Appellant (5)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Carma M Kilburg, the claimant/appellant filed an appeal from the March 30, 2021, (reference 01) unemployment insurance decision that denied benefits because she voluntarily quit on February 14, 2021. The parties were properly notified about the hearing. A telephone hearing was held on June 23, 2021. Ms. Kilburg participated and testified. The employer participated through Kyle Gates, manager and Luann Wagner, people lead (human resources). Official notice was taken of the administrative record.

ISSUE:

Is Ms. Kilburg able to and available for work?
Did Ms. Kilburg voluntarily 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: Ms. Kilburg began working for the employer on November 9, 2004. She worked as a full-time worker in the electronics department until December 2020 when she began working part-time.

In March 2020, the United States declared a public health emergency because of the COVID-19 pandemic. In February 2021, Ms. Kilburg became concerned about new strains of COVID-19 and concerned about her risk of testing positive for COVID-19. Ms. Kilburg requested to take personal leave for several months. The employer agreed. Ms. Kilburg began unpaid, personal leave on February 17. Her leave was approved through July 5.

In May, Ms. Kilburg received the first shot of the COVID-19 vaccination. She had an allergic reaction to the vaccine. Ms. Kilburg decided to retire since she had worked for the employer for almost seventeen years.

On June 4, Ms. Kilburg met with Ms. Wagner. Ms. Kilburg told Ms. Wagner that she wanted to put in her notice and retire. Ms. Wagner gave Ms. Kilburg the voluntary resignation form to complete. Ms. Kilburg did not read the form and see that Ms. Wagner had given her a

resignation form. Ms. Kilburg completed the form and listed complications from the COVID-19 vaccine and her health as reasons for ending her employment. Ms. Kilburg left the meeting assuming she had retired. The employer processing the resignation form and listed Ms. Kilburg's end of employment date as June 7.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Kilburg was not available for work from February 17, 2021 through June 4, 2021 and Ms. Kilburg's separation from employment was without good cause attributable to the employer.

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".

Iowa Admin. Code r. 871-24.23(8) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Iowa Code section 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. 871-24.25(37) 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

In this case, Ms. Kilburg was on a leave of absence from February 17, 2021 through June 4, 2021 due to ongoing health issues. Ms. Kilburg has not established that she is able to and available for work during this time period, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, Ms. Kilburg is not eligible for regular, state-funded unemployment insurance benefits from February 17, 2021 through June 4, 2021.

Regarding the ending of Ms. Kilburg's employment, 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). "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).

In this case, it is undisputed that Ms. Kilburg ended her employment on June 4, 2021. Ms. Kilburg thought she retired but she completed a resignation form so the employer considered her to have resigned. If Ms. Kilburg retired, she removed herself from the workforce and, therefore, cannot be unemployed. If Ms. Kilburg voluntarily quit, even for good personal reasons, that is not for a good-cause reason attributable to the employer according to Iowa law. In the end, whether Ms. Kilburg retired or she resigned, she is not eligible for benefits as of June 4, 2021. .

DECISION:

The March 30, 2021, (reference 01) unemployment insurance decision is modified with no change in effect. Ms. Kilburg was not available for work from February 17, 2021 through June 4, 2021 and Ms. Kilburg's separation from employment on June 4, 2021 was without good cause attributable to the employer. Benefits are withheld until such time as Ms. Kilburg has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Daniel Zeno
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

July 6, 2021
Decision Dated and Mailed

dz/mh